

# **Exhibit 2**

# OPUS2

Skatteforvaltningen v Solo Capital Partners LLP & Others

Day 1MT

April 15, 2024

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April 15, 2024

Skatteforvaltningen v Solo Capital Partners LLP &amp; Others

Day 1MT

1 Monday, 15 April 2024  
 2 (10.00 am)  
 3 Housekeeping  
 4 MR JUSTICE ANDREW BAKER: Good morning, Mr Rabinowitz. We  
 5 are here at last.  
 6 MR RABINOWITZ: Yes, indeed, my Lord.  
 7 May it please your Lordship, I, together with the  
 8 individuals your Lordship has seen have signed our  
 9 written submissions, appear in this matter for SKAT.  
 10 This, of course, as your Lordship knows, being the trial  
 11 of the dispute between SKAT and various parties, arising  
 12 out of the circumstances in which SKAT came to pay some  
 13 12.09 billion Danish krone — that is about  
 14 £1.44 billion — in purported tax refunds to various  
 15 persons, no part of which, as your Lordship knows, we  
 16 say was in fact payable.  
 17 That has, of course, again as my Lord is aware,  
 18 given rise to a number of claims in a number of  
 19 jurisdictions against a number of parties, by which SKAT  
 20 seeks remedies in relation to the sums that it has paid  
 21 and for which it contends in these proceedings before  
 22 this court that the parties before this court are in  
 23 some respects liable.  
 24 My Lord, in terms of the defendants, as your  
 25 Lordship knows, there are 17 sets of defendants who are

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1 still active and before the court.  
 2 MR JUSTICE ANDREW BAKER: Yes.  
 3 MR RABINOWITZ: They are, and your Lordship will have to  
 4 forgive me as I run through them, but it seems to me the  
 5 least I should be doing. They are the Sanjay Shah  
 6 defendants and Usha Shah, represented by Mr Jones KC and  
 7 his team; the DWF defendants, represented by Mr Head KC  
 8 and his team; Mr Devonshire, represented by Mr Jory KC;  
 9 Mr Lui represented by PC Byrne; Mr Bains, represented by  
 10 DLA Piper; Messrs Knott and Hoogewerf represented by  
 11 Reed Smith; and I should just pause there to apologise  
 12 to anyone whose name I have mispronounced. It is going  
 13 to happen, I'm afraid. I will do my best.  
 14 Lindisfarne, represented by its principals,  
 15 Mr Hogarth and Mr Baker, and then a number of  
 16 individuals who are representing themselves, my Lord.  
 17 If I can run through those for your  
 18 Lordship: Mr Fletcher, Mr Jain, Mr Godson, Mr Klar,  
 19 Mr Koerner, Mr Murphy, Messrs Oakley and Mitchell,  
 20 Mr Patterson and Mr Smith.  
 21 Ms Bhudia is also a defendant but is not  
 22 participating in the trial. In addition to these active  
 23 defendants, as your Lordship may recall, SKAT has  
 24 already had default judgment on liability but not  
 25 quantum against three further groups of defendants, the

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1 claims against which are therefore live before your  
 2 Lordship for the purposes of quantum only.  
 3 MR JUSTICE ANDREW BAKER: Yes.  
 4 MR RABINOWITZ: Those are the claims are against — again,  
 5 if I can just identify them — Syntax, SCL and the two  
 6 Polaris entities and that is a list of the parties.  
 7 My Lord, in terms of my oral opening of the case,  
 8 subject to your Lordship, I'm acutely aware that your  
 9 Lordship has been deluged with long and I hope  
 10 reasonably helpful written submissions that explain in  
 11 some detail what the case is about and more generally  
 12 the position taken by various parties.  
 13 MR JUSTICE ANDREW BAKER: Yes. I did want to make one  
 14 observation just to inform the parties where I have got  
 15 to in relation to that. For several reasons, but  
 16 including their respective length, the amount of time  
 17 I in fact found I had last week alongside other  
 18 commitments at the start of a new term and the fact that  
 19 I was conscious that in proportionate terms as the trial  
 20 progresses even within openings I'm likely as  
 21 a practical reality to hear more from Mr Jones and  
 22 Mr Head respectively than from any other individual  
 23 representative or team, I therefore focused first,  
 24 having read SKAT's opening, on those openings I have  
 25 received from defendants other than the Shah defendants

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1 and the DWF defendants.  
 2 As we speak, I would not be able to claim to have  
 3 read yet or rather to have completed yet my reading of  
 4 the Shah defendants' and the DWF defendants' written  
 5 openings.  
 6 I have read carefully the first sections of them  
 7 which include overviews and skimmed through the rest.  
 8 But I will have to be, in my own time, catching up on  
 9 the rest of the detail of their written openings outside  
 10 court hours as we get going.  
 11 But I thought I ought to mention that just in case  
 12 anybody then popped up and said they were not willing  
 13 for you to get going on the documentary opening today  
 14 and that I should instead take the morning or the day to  
 15 finish that reading. I anticipate in the way the matter  
 16 has been conducted generally that is probably not an  
 17 application anyone will make, but I thought I should  
 18 raise it to check. Nobody is popping up on their feet  
 19 to say so.  
 20 MR RABINOWITZ: Your Lordship, before I carry on, and  
 21 I probably should have said this at the outset, but your  
 22 Lordship will obviously want to have a break for  
 23 transcribers. Is there any particular time that your  
 24 Lordship —  
 25 MR JUSTICE ANDREW BAKER: Yes. I think in the morning if

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1 you aim essentially for 11:30 for 10 minutes or so, and  
 2 then in the afternoon, we are trying to take shorter  
 3 sitting afternoons, essentially 3 o'clock more or less  
 4 on the dot for as short as break as we can all manage,  
 5 just to stretch legs and take a comfort break if we need  
 6 it. Thank you. Yes.  
 7 MR RABINOWITZ: My Lord.  
 8 MR JONES: My Lord, may I just check that we were hoping  
 9 that there would be people attending remotely. In the  
 10 past we have seen them on screen. I think it has been  
 11 arranged that we will not see them on screen but I have  
 12 no way at the moment of checking that they are logged  
 13 in. Is there any technician in court who can assist us  
 14 with that or not? I think not.  
 15 MR JUSTICE ANDREW BAKER: I think the answer is that the  
 16 Opus operatives in the back corner of the room — do we  
 17 have those logged in online?  
 18 MR JONES: I think it is confirmed. I'm sorry to interrupt.  
 19 I wanted to make certain that my client was listening,  
 20 thank you.  
 21 MR RABINOWITZ: My Lord, I should also apologise. There is  
 22 one more individual defendant representing himself who  
 23 I failed to mention, and that is Mr Preston.  
 24 My Lord, in terms of the oral opening, I'm obviously  
 25 not going to be able to cover the case in the same

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1 detail that it is covered in the written document  
 2 because I only have — only! — I only have six days,  
 3 but what I propose to do, if I can just identify for  
 4 my Lord a road map, first I'm going to say something  
 5 about the shape of the case generally.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: Secondly, as my Lord has requested, I'm  
 8 going to walk your Lordship through the basic trading  
 9 structure in the Solo Scheme in 2012–2013, as described  
 10 at paragraph 90 of our written opening.  
 11 Third, I propose to address your Lordship on what,  
 12 if any, misrepresentations were made to SKAT and in that  
 13 context I will also say something briefly about  
 14 reliance.  
 15 Fourth, to say something about what we have called  
 16 the Solo Scheme, in the course of which introducing your  
 17 Lordship to some of the key players in that scheme and  
 18 identifying some of the key features of that scheme,  
 19 including obviously by reference to the documentation  
 20 before the court.  
 21 Fifth, having done that, I propose to say something  
 22 about the second of the schemes with which this trial is  
 23 generally concerned, and that is what your Lordship  
 24 knows we have called the Maple Point Scheme, which was  
 25 again, as my Lord will know, a breakaway from the

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1 original Solo Scheme, involving a number of individuals  
 2 who had been part of the first Solo Scheme.  
 3 Sixth, I will turn, again subject to your Lordship,  
 4 to deal with the third of the schemes, namely the  
 5 Klar Scheme, which as my Lord may recall is a simplified  
 6 version, or was a simplified version of the Solo Scheme,  
 7 doing much the same thing.  
 8 MR JUSTICE ANDREW BAKER: Yes.  
 9 MR RABINOWITZ: And having done that we will deal with the  
 10 issues relating first to the English law of tracing,  
 11 which may be relevant as we go along, and secondly to  
 12 certain issues of Danish law, to the extent that that is  
 13 going to matter. Those, subject to your Lordship, will  
 14 be matters taken by Mr O'Leary.  
 15 MR JUSTICE ANDREW BAKER: Thank you. In my typical fashion,  
 16 Mr Rabinowitz, I have three matters I would quite like  
 17 to raise as early possible. I don't want you to fail to  
 18 have concluded any purely preliminary remarks about how  
 19 we are going to proceed before I do that but I probably  
 20 do want to raise them before we start to get into  
 21 a first matter of any substance in terms of opening.  
 22 MR RABINOWITZ: The only thing I was going to cover before  
 23 I got into that substance is housekeeping points and  
 24 that may be the time to deal with your Lordship's  
 25 points.

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1 MR JUSTICE ANDREW BAKER: Yes, thank you.  
 2 MR RABINOWITZ: Your Lordship has very kindly listed  
 3 a half-day hearing for this Friday, to deal with some of  
 4 the case management matters which have arisen since the  
 5 PTR.  
 6 MR JUSTICE ANDREW BAKER: Yes, and I have seen, which may  
 7 shorten the time you need to spend now on it, I have  
 8 seen a letter from Pinsent Masons with an agenda as  
 9 things stand at least.  
 10 MR RABINOWITZ: I'm grateful.  
 11 MR JUSTICE ANDREW BAKER: And the suggestion that it might  
 12 be that we will need more than the three-hour morning  
 13 that I had initially set aside. I'm not, as I speak,  
 14 able to say we will definitely be able to go into the  
 15 afternoon but I have that on board as something I need  
 16 to look at.  
 17 MR RABINOWITZ: I'm grateful for that, my Lord. On the  
 18 basis that that is a possibility, then according to the  
 19 Commercial Court guides skeletons will be served at 4 pm  
 20 on Tuesday, that is to say tomorrow. But again ...  
 21 MR JUSTICE ANDREW BAKER: Well, given everything else that  
 22 is going on and given the slightly miscellaneous nature  
 23 of the points that arise, albeit that there may then be  
 24 a reasonably important discussion to be had as to what  
 25 we do with the trial timetable, depending on what

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1 decisions I might have made on prior points, I'm not  
2 sure I would insist on treating it as now as a heavy  
3 application with skeletons due sequentially tomorrow and  
4 so on.

5 I think it would be helpful — as we have done with  
6 other substantial case management hearings, it probably  
7 would be helpful for there to be exchange sequentially  
8 so that SKAT, that has oversight of all the different  
9 bits and pieces, puts something in first and any  
10 defendants who are going to participate on Friday can  
11 then just focus responsively on the parts that affect  
12 them.

13 I don't know whether it would be possible to do an  
14 exchange late Wednesday and then something coming in  
15 Thursday from defendants.

16 MR RABINOWITZ: That is what we were going to ...

17 MR JUSTICE ANDREW BAKER: Thank you.

18 MR RABINOWITZ: My Lord, your Lordship wanted to raise three  
19 points, I think.

20 MR JUSTICE ANDREW BAKER: Yes. The first is this, and for  
21 these purposes I may need to ask for early assistance  
22 from our EPE operator. If they could put up  
23 {F/361/119}. So page 119. Is it possible to show that  
24 so we have all of paragraph 242 on the screen, which  
25 goes over the page. {F/361/120}.

9

1 There we are. If I just read out that paragraph,  
2 which is only in fact a single sentence, and  
3 I appreciate that it is in the nature of an overarching  
4 summary sentence or paragraph where one says for the  
5 details see elsewhere, but it says:

6 "For the reasons set out in the respective Defendant  
7 Annexes, SKAT alleges that the defendants~..."

8 So that is all of them, apart from those identified  
9 in the footnote.

10 "... jointly assisted in the making of the WHT  
11 Application Representations [so that is all of them] and  
12 the Custodian CAN Representations by actions taken by  
13 them in furtherance of the deceptions [all of them] in  
14 pursuance of a [that is singular] common design to  
15 defraud~..."

16 Now, I don't in fact understand that in quite those  
17 literal terms, in the way I have just interpolated them  
18 by way of comment, to be SKAT's case and I don't think  
19 anybody else understands it to be SKAT's case, but I did  
20 feel it was appropriate just to raise, even at this very  
21 early stage, that as I understand it in fact there are  
22 in various ways narrowings of that apparently  
23 unqualified and overarching proposition so that, for  
24 example, as regards the DWF defendants, liability  
25 against them is not asserted in respect of the

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1 Solo Scheme, as SKAT calls it, after the point at which  
2 each of them has left Solo. And conversely liability is  
3 not asserted against Sanjay Shah in relation to the  
4 Maple Point Scheme and so on.

5 Now, by way of observation at this stage there are  
6 a few other places, I will just mention them for the  
7 transcript, for example, paragraph 287 {F/361/140},  
8 paragraph 299 {F/361/144}, where similarly, if read in  
9 isolation, you might possibly be misled into thinking  
10 that the allegation is more all-encompassing against all  
11 defendants.

12 That all said, I haven't found it as clear simply  
13 from the written openings as I would have perhaps liked  
14 it to have been just to have in front of me as a working  
15 document what that therefore means in practice.

16 If I can just — sorry, I haven't got the page  
17 number because the copy I'm using is not the bundle  
18 copy. If our operator could find the DWF defendants'  
19 opening at paragraph 27. So that is page 16 of the  
20 opening.

21 MR HEAD: {F/381/1}, I believe.

22 MR JUSTICE ANDREW BAKER: That doesn't look right. Can we  
23 try page {F/381/16}. Yes, that does look right.

24 As it appears, there in paragraph 27 the DWF  
25 defendants' team have translated into a pithy summary

11

1 what they understand the scope of their alleged  
2 liability involvement to translate to.

3 So, for example, Mr Horn, they say they understand  
4 the claim against him therefore comes down to as regards  
5 damages 559 million krone re Solo Scheme up  
6 to July 2013, 2.7—odd billion krone re  
7 Maple Point Scheme, and as regards other types of  
8 remedy, traceable proceeds of £24.8—odd million relating  
9 in some way to the Solo Scheme and £14.6—odd —  
10 £14.7—odd million relating to the Maple Point Scheme.

11 Now, for a slightly fuller but still very concise  
12 summary analysis of what the claim against Mr Horn is  
13 said ultimately boils down to in money terms, one might  
14 wish to have just an indication of the degree to which  
15 those are cumulative or involve areas where, for  
16 example, if the traceable proceeds claim succeeds there  
17 will have to be some election at point of judgment by  
18 SKAT and/or recovering that relief will in fact in and  
19 of itself reduce any damages claim.

20 So, subject to explanatory comment of that type  
21 which could be in a footnote, I find myself wondering  
22 whether by the time any defendant has to give  
23 evidence — so that is the sort of timescale I have in  
24 mind, not something that you and your team need to start  
25 scrambling to get together overnight or anything like

12

1 that — but might it be possible before the first week  
 2 of defence evidence actually to have a comprehensive  
 3 equivalent of that sort of level of detail in a single  
 4 document for all defendants?  
 5 So it is almost like — but without all the  
 6 formalities of recitals and so on, but it's almost like  
 7 a summary version of the draft order that if today  
 8 I accelerated all the way to the end and said you have  
 9 proved all of your claims and we will skip every other  
 10 process, but if we had got to that point, what in fact  
 11 would the substantive content of the relief sought in  
 12 a judgment order look like, defendant by defendant.  
 13 Just to have that as a working document for  
 14 everybody, in particular before the defendants then go  
 15 into the witness box, I think would be useful and it  
 16 would flush out if by any chance, for example —  
 17 I happened to pick on Mr Horn as a for instance — if by  
 18 any chance their summary there is not quite what SKAT  
 19 thinks it should be, that would flush out those  
 20 differences at that stage that can then be discussed  
 21 offline. Does that make sense?  
 22 MR RABINOWITZ: Completely, my Lord, and we will do that as  
 23 soon as we can.  
 24 MR JUSTICE ANDREW BAKER: Thank you.  
 25 Then my second point of housekeeping affected

13

1 Lindisfarne. I hope Mr Baker or Mr Hogarth, who is here  
 2 today, won't mind my asking this question and I hope in  
 3 a sense that if the answer to it is no, they will take  
 4 it as a compliment that the written submissions they  
 5 have served have caused me to ask the question.  
 6 As I read those written submissions, they came  
 7 across very much as a written opening settled by  
 8 counsel. If it has not been, then take it as  
 9 a compliment, as I have indicated, that it comes across  
 10 thus professionally written.  
 11 If it had been settled by counsel, I was only going  
 12 to raise at least the possibility whether fully  
 13 accepting that counsel are not — there is no legal  
 14 representation briefed for trial, but whether as  
 15 a matter of professional niceties I should be entitled  
 16 to know who of counsel has settled the written opening.  
 17 MR HOGARTH: We wrote the statement and we had it checked  
 18 out with a barrister, but he didn't add virtually  
 19 anything to it, we wrote the statement ourselves.  
 20 MR JUSTICE ANDREW BAKER: That is all you need to say. In  
 21 that case take it as a compliment that it occurred to me  
 22 even to raise the question. But I will raise the  
 23 follow-on very tiny question — this is not the trial  
 24 judge's attempt only to demonstrate that he has actually  
 25 read the documents — and don't give me an immediate

14

1 answer, take it away and just look at it: in your  
 2 paragraph 38, there is a sentence at the end that is  
 3 worthy of your trial judge, that is to say it is at  
 4 least a triple negative, and I do tie myself up in those  
 5 sometimes, as I have read it a couple of times I find  
 6 myself thinking that the final "not" in that last  
 7 sentence of your paragraph 38, I wonder if that is wrong  
 8 and actually that sentence has ended up because of the  
 9 double or triple negative having, as it were, the  
 10 opposite meaning to what you intended.  
 11 But don't give me an answer now. Just, if you  
 12 wouldn't mind, take that away and at some point  
 13 communicate through my clerk and to the parties whether  
 14 it is correctly written or whether I should treat it as  
 15 something that needs a typo correction.  
 16 MR HOGARTH: Can we just send a note to yourself?  
 17 MR JUSTICE ANDREW BAKER: Just by email to my clerk, copied  
 18 to the represented parties, as to whether we should  
 19 identify that as a correction that needs to be made.  
 20 Thank you.  
 21 MR HOGARTH: Yes, I will do that. Thank you.  
 22 MR JUSTICE ANDREW BAKER: The other matter I wanted to raise  
 23 was the position of Mr Knott and Mr Hoogewerf and  
 24 Mr Bergson. Thank you very much, after our exchange  
 25 through my clerk at the end of last week, for having the

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1 courtesy to attend.  
 2 As I understand the position, Mr Bergson, obviously  
 3 you with Reed Smith have continued to be retained up to  
 4 and including the settling of those written opening  
 5 submissions, which I have read and for which I'm  
 6 grateful, on the behalf of Mr Knott and Mr Hoogewerf,  
 7 but other than doing me the courtesy of making a brief  
 8 appearance this morning, as things stand you and  
 9 Reed Smith are not instructed to attend and represent  
 10 Messrs Knott and Hoogewerf at trial; is that right?  
 11 MR BERGSON: Yes, my Lord.  
 12 MR JUSTICE ANDREW BAKER: Yes. I do feel, and I would very  
 13 much prefer not to end up becoming sidetracked in  
 14 a possible dispute or debate as to whether I share the  
 15 view that has been expressed that you can acceptably  
 16 have solicitors on the record if you are an individual  
 17 litigant and then conduct a trial yourself.  
 18 I'm not sure I regard it as self-evident that that  
 19 is correct, and I'm not sure that when the White Book  
 20 editors have said what they have said, which I have seen  
 21 because you referred me to it His Honour Judge Pelling  
 22 king's counsel has said, I'm not sure that they have not  
 23 confused two rather different concepts. Or rather I'm  
 24 not sure that, with respect to him, Judge Pelling might  
 25 not have confused two rather different concepts.

16

1 One is a litigant who is acting in person and  
2 another is a litigant who is an individual. At least in  
3 my ordinary use of the language I would not say, as  
4 things stand, that Messrs Knott and Hoogewerf are acting  
5 in person. The reason they are not acting in person is  
6 because they have Reed Smith acting for them and they  
7 are on the record.

8 They are individual litigants, the same as Mr Jain,  
9 Mr Godson and lots of other individuals, and indeed for  
10 that matter Sanjay Shah is an individual as litigant  
11 rather than a corporate entity as litigant. But they  
12 are not acting in person, they are acting through  
13 Reed Smith, because Reed Smith are on the record, and so  
14 I think at least provisionally my understanding of the  
15 comment in the White Book that says when somebody is  
16 acting in person all things being equal they have an  
17 absolute right, for example to attend a trial and  
18 conduct their case themselves, even if they are being  
19 assisted by somebody who is so qualified that they could  
20 be on the record for them is not the same thing as  
21 saying that somebody who does have legal representation  
22 on the record is entitled simply to stand up as if they  
23 were litigating in person, because they are not.

24 But in a sense I would prefer not to have to invite  
25 argument about that and make a ruling about that. My

17

1 greater focus at this stage is the pragmatic and  
2 practical difficulty that for as long as Reed Smith are  
3 on the record but indicating that they and you are not  
4 really instructed to attend trial, what is everybody  
5 else supposed to do? Because on the face of things it  
6 is not professionally proper for any of the represented  
7 parties to be corresponding directly with Mr Knott and  
8 Mr Hoogewerf because they have Reed Smith on the record.

9 Reed Smith are going to say we are not responding  
10 to, as it were, trial correspondence, because we are not  
11 instructed to take an active part in trial and were it  
12 correct that Mr Knott and Mr Hoogewerf had some  
13 procedural right to attend and conduct their own case on  
14 their feet, as it were, even though they had Reed Smith  
15 acting, I think we could get into all sorts of quite  
16 awkward complications with people trying to decide when  
17 is something happening on which they are entitled to  
18 correspond directly with Mr Knott and Mr Hoogewerf  
19 because in effect that is the sort of thing that would  
20 be the subject matter of direct discussion between  
21 counsel about matters of presentation to the court and  
22 when are we doing something that really ought still to  
23 be correspondence with Reed Smith.

24 That is by way of rather lengthy preamble for saying  
25 that as it presently stands, and subject to any

18

1 difficulty this gives rise or is perceived to give rise  
2 for you or Reed Smith, as it presently seems to me if  
3 the intention is that Reed Smith are not to be on the  
4 record and that was going to become the position,  
5 I rather feel the sooner that is formalised the better  
6 and Mr Knott and Mr Hoogewerf are simply in the same  
7 position then as Mr Jain, Mr Godson and other litigants  
8 in person; they are fully litigating in person, albeit  
9 in their case they had your legal representation through  
10 to and including the completion of the written openings.

11 MR BERGSON: My Lord, that is heard loud and clear. I can  
12 confirm that Reed Smith anticipates coming off the  
13 record before the end of the week. So the debate in  
14 terms of the point you put to me as regards my clients'  
15 entitlements to exercise a right of audience on their  
16 own behalf is arid, and I don't think we need to get  
17 into it.

18 MR JUSTICE ANDREW BAKER: Because the first time — other  
19 than this dialogue, the first time in practice when they  
20 would have been required to be deciding what, if any,  
21 contribution to make by way of advocacy at trial will be  
22 when we get to the couple of days for defendants'  
23 opening remarks, which will be the end of next week.

24 MR BERGSON: I think next Thursday for other defendants, my  
25 Lord. So the position will be tied off this week.

19

1 MR JUSTICE ANDREW BAKER: Very good. Mr Bergson, I am very  
2 grateful for that, and at least so far as I am  
3 concerned, and subject to any submission to the contrary  
4 by any other party, although I repeat my thanks for the  
5 courtesy you and Reed Smith have shown in attending  
6 today, if you would otherwise not have attended today or  
7 would like to be released, I'm certainly content that  
8 you not feel under any obligation to attend for the rest  
9 of this week if that gives rise to any difficulty, or in  
10 particular if it would give rise to the incurring of any  
11 further fees Mr Knott and Mr Hoogewerf would prefer not  
12 to incur.

13 So I leave that in your hands and your clients'  
14 hands as to how much, if at all, you or anyone from  
15 Reed Smith continues to attend this week.

16 MR BERGSON: I'm grateful, my Lord, and given your  
17 indication I propose to be released. So thank you.

18 MR JUSTICE ANDREW BAKER: Yes, Mr Rabinowitz, thank you.

19 Opening submissions by MR RABINOWITZ

20 MR RABINOWITZ: So the introduction to the shape of the  
21 case.

22 MR JUSTICE ANDREW BAKER: Yes.

23 MR RABINOWITZ: Just to say this at the outset, my Lord,  
24 I will in making these submissions be assuming  
25 a reasonably detailed level of knowledge on the part of

20



1 your Lordship in relation certainly to issues which your  
2 Lordship has considered in the course of your judgment.  
3 But if at any point I say something and assume that  
4 knowledge when it is not there, your Lordship will  
5 obviously let me know.

6 MR JUSTICE ANDREW BAKER: Thank you, Mr Rabinowitz.  
7 At the risk of utter pedantry, and some in court  
8 know that I do find it both pedantic on my part but  
9 nonetheless something I do mention from time to time,  
10 for Opus as our transcribers, please remember I am not  
11 Mr Justice Baker, I have never been Mr Justice Baker and  
12 I never will be Mr Justice Baker. My judicial title  
13 does include my first name because there was a more  
14 senior Mr Justice Baker when I came to the bench, so  
15 since this is an historic record of the proceedings that  
16 should be reflected in the transcript any time I'm being  
17 mentioned on the transcript. Thank you.

18 Yes.  
19 MR RABINOWITZ: My Lord, in terms of the general shape of  
20 the case, as your Lordship knows, SKAT in these  
21 proceedings advances a number of causes of action  
22 against the defendants under English law or if  
23 applicable under Danish law, both in relation to those  
24 parties we say were responsible for deceiving SKAT into  
25 paying out the sums I have mentioned, but also in

21

1 relation to those involved in if you like receiving and  
2 dealing with the proceeds obtained through what we say  
3 was a scheme.

4 However, whilst your Lordship will very likely in  
5 due course have to address those various different  
6 causes of action, it is I would suggest fair to say that  
7 this case at its heart is about allegedly fraudulent  
8 misrepresentations on which we say SKAT relied and as  
9 a result paid out very large amounts and suffered  
10 losses.

11 There are a few caveats to this statement which  
12 I will come back to at the end of my introduction  
13 but for now, my Lord, staying with the claim for  
14 fraudulent misrepresentation, that raises in the normal  
15 way in particular the following issues.

16 First, what representations were made; second, which  
17 defendants bear responsibility for those  
18 representations; third, were any of the alleged  
19 representations false; fourth, did any of the relevant  
20 defendants know that they were false; fifth, did SKAT in  
21 fact rely on any of those representations; and if so,  
22 sixth, what were the losses that were suffered as  
23 a result.

24 My Lord, in consequence of your Lordship's foresight  
25 in ordering the validity issues trial, we say that if

22

1 my Lord finds that the representations for which we  
2 contend were made, those representations being in  
3 general terms, going to whether as regards the  
4 withholding tax applicants, shares in the relevant  
5 company were owned by them, dividends declared by those  
6 Danish companies were paid to them by a Danish company  
7 and in an amount in respect of those dividends so  
8 paid —— sorry, and an amount in respect of those  
9 dividends so paid was withheld from them in respect of  
10 tax, then we say, my Lord, that in light of your  
11 Lordship's validity issues judgment, and indeed the  
12 largely undisputed facts, the answer to the question of  
13 falsity is largely clear. And I accept that there is  
14 a caveat, which I will come back to.

15 MR JUSTICE ANDREW BAKER: And in any event the answer to the  
16 question of falsity —— sorry, the question of falsity  
17 can be addressed on a single defined basis as to what  
18 Danish tax law did or did not require as set out in the  
19 validity issues judgment, rather than at this very long  
20 factual trial finding that we have to be engaged in  
21 a series of differing and alternative arguments as to  
22 whether they would or would not be false if X or if Y or  
23 if Z concerning Danish tax law, which is really why we  
24 chose to have that trial.  
25 MR RABINOWITZ: And it definitely proves worthwhile for the

23

1 reasons I have tried to articulate.

2 MR JUSTICE ANDREW BAKER: Thank you. Just going back to the  
3 proper law point, am I right to understand, at least in  
4 your submission for the purposes of this main trial now,  
5 that the combined consequence of the case management  
6 orders that I was persuaded to make concerning proper  
7 law and the pleading of foreign law and what then  
8 happened on the pleadings is that there is a limited  
9 number of defendants who positively aver that the claims  
10 against them fall to be determined under Danish law?

11 MR RABINOWITZ: Your Lordship is right.

12 MR JUSTICE ANDREW BAKER: When I come to —— in due course,  
13 at the end of the case, when I come to be making  
14 decisions on liability in relation to the claims made  
15 against those defendants therefore, potentially I need  
16 to grapple with the question of governing law but it  
17 only arises then in SKAT versus those defendants, even  
18 if I decide, as it were, in SKAT versus one or more of  
19 those defendants that one or more of SKAT's claims  
20 against them is to be dealt with under Danish law for  
21 that reason, when it then comes to, for example, SKAT v  
22 Sanjay Shah I am still determining that on the basis of  
23 English law and therefore there is that possibility  
24 because of that procedural history that I am determining  
25 in a sense similar or equivalent claims by SKAT against

24



1 D1 and D2, where I'm determining it on the basis of  
 2 English law against D1 but determining it on the basis  
 3 of Danish law against D2, and if that's what it is,  
 4 that's what it is.  
 5 MR RABINOWITZ: It is conceivable that your Lordship could  
 6 therefore reach on the same facts different results  
 7 depending on whether the defendant has sought to rely on  
 8 Danish law or English law.  
 9 MR JUSTICE ANDREW BAKER: In particular, if there is some  
 10 aspect of Danish law as proved or as determined at the  
 11 end that makes a difference. Yes, all right.  
 12 MR RABINOWITZ: Can I just, since your Lordship raises it,  
 13 identify for your Lordship the handful of defendants  
 14 that do rely on Danish law.  
 15 MR JUSTICE ANDREW BAKER: Yes.  
 16 MR RABINOWITZ: They are Messrs Knott and Hoogewerf, and  
 17 Mr Fletcher, the Jain defendants and the Godson  
 18 defendants.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: Now, I think I have just said that if your  
 21 Lordship decides the representations that we allege were  
 22 made were indeed made, then the answer to the question  
 23 of falsity is now clear.  
 24 That is because, as we have noted, that is at  
 25 paragraph 36 of our main skeleton, the principal

25

1 defendants ——— and by that I mean the SS defendants, with  
 2 all due respect to the other defendants — the DWF  
 3 defendants and Mr Klar accept that in and of themselves  
 4 the three schemes did not result in the WHT applicants  
 5 owning any Danish shares as a matter of Danish tax law,  
 6 or indeed receiving or being entitled to receive any  
 7 dividends paid by the relevant Danish company, or indeed  
 8 those parties suffering any withholding tax on any such  
 9 dividends.  
 10 I said that it was subject to certain caveats and  
 11 my Lord may have picked these up, in particular —  
 12 my Lord may not have picked these up as well because  
 13 they are identified in the SS defendants' written  
 14 opening, I'm not inviting your Lordship to go there, but  
 15 it is paragraph 331 of that opening. Again, I am not  
 16 inviting you to go to there but I will give the  
 17 reference {F/382/141} and no doubt Mr Jones will address  
 18 in his oral opening.  
 19 The main caveat, as we understand it, that the SS  
 20 defendants appear to identify relates, it seems, to  
 21 whether the brokers that were used for these trades may  
 22 have had other non—Solo clients who were not short  
 23 sellers, which as my Lord may recall is a point we  
 24 address in some detail in our skeleton at  
 25 paragraph 38.1, again I'm not going to say any more

26

1 about that now. We will see what Mr Jones says about  
 2 that.

3 By contrast to the SS defendants, so far as we can  
 4 tell, Mr Klar does not rely on any such caveats, in  
 5 respect of falsity in the way I have described it, and  
 6 it appears from the DWF defendants' openings that they  
 7 do not either.

8 But, my Lord, even allowing for the caveats  
 9 persisted in by the SS defendants going to falsity, we  
 10 do say nonetheless that the key issues to be explored in  
 11 the trial in relation to the fraud claims are likely to  
 12 be identifying the representations made and whether they  
 13 were relied on by SKAT, and identifying which defendants  
 14 bore or bear responsibility for the alleged  
 15 representations by virtue of where they appear in what  
 16 we have described as the scheme. Again, I want to be  
 17 careful because I am trying to be as neutral as  
 18 possible, your Lordship will understand what I mean when  
 19 I say "scheme", it is not of itself intended to carry  
 20 pejorative connotations, but it is our case that there  
 21 was a scheme.

22 And identifying whether those defendants —  
 23 MR JUSTICE ANDREW BAKER: I think I have made the  
 24 observation before that I don't in general think of the  
 25 word "scheme" itself as pejorative, rather than that it

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1 indicates that at least some of the actors involved  
 2 structured or intended to structure all the different  
 3 parts of what is put forward as the trading pattern in  
 4 a particular way to achieve a particular affect. That  
 5 is a scheme of transactions, if nothing else, a way of  
 6 doing things that was, as it were, deliberately  
 7 designed. And there may be questions, as I have picked  
 8 up, of which of the different defendants or groups of  
 9 defendants were privy in the sense of having knowledge  
 10 and awareness of the fact it had all the different  
 11 moving parts that ended up amounting to SKAT says — and  
 12 we will get into the detail of that, and I know that  
 13 that is contentious, but as SKAT says looping or  
 14 self—cancelling or netting out and so on. There are  
 15 shades of issue over who knew how much, to what extent  
 16 are certain people in fact only aware that they are  
 17 doing a certain thing that has a certain shape to them  
 18 not necessarily knowing the wider set of transactions  
 19 that, say, Sanjay Shah and Solo will fit that into.  
 20 That is a separate point.

21 MR RABINOWITZ: Indeed but —

22 MR JUSTICE ANDREW BAKER: But the scheme itself I regard as  
 23 simply they might say trading model, but I'm not sure  
 24 I regard it as anything other than synonymous with that  
 25 but using one fewer word.

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1 MR RABINOWITZ: Your Lordship will understand when I am  
 2 using the word "scheme", I am not just referring to it  
 3 like "trading model"; I'm referring to a trading model  
 4 the objective of which was to, in a sense, facilitate  
 5 the production of application for a tax refund. And  
 6 your Lordship again is right to say what is going to  
 7 matter, so what is undeniably the fact, is that there  
 8 was this trading model which did give rise to  
 9 applications which involved certain documents, which did  
 10 give rise to refunds (inaudible) more than that.

11 What your Lordship is going to have to grapple with,  
 12 and given the number of defendants it is not going to be  
 13 straightforward, is the role played — some defendants  
 14 it is very easy to see what their role is, other  
 15 defendants who in a sense are on the outside of the  
 16 scheme, it is going to be more difficult to work out  
 17 precisely what responsibility they bear and I'm hoping  
 18 to be able to help your Lordship a little bit with that  
 19 in opening.

20 Indeed, not only what role they bear but what they  
 21 knew about in a sense the wider scheme in which they  
 22 were participating, whether knowingly or not.

23 Now, the same point really arises in respect of —  
 24 or comes back in respect of the question your Lordship  
 25 may also have to grapple with which is the losses SKAT

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1 has suffered as a result of any wrongdoing. At one  
 2 level this may be more straightforward because the  
 3 losses, we say at least, flow directly from the making  
 4 of the WHT applications, so that one just has to look at  
 5 what was paid out in consequence of those applications  
 6 to get a sense of the loss. But that doesn't answer the  
 7 question of what losses any particular defendant should  
 8 be liable for, in a sense that goes back to the point  
 9 your Lordship raised with me as one of your three  
 10 housekeeping points, and again a lot of that will depend  
 11 obviously on the precise role and responsibility of that  
 12 defendant.

13 MR JUSTICE ANDREW BAKER: Going all the way back to the  
 14 overall aggregate figure in loss that SKAT says, as it  
 15 were, collectively across the different, as it says,  
 16 schemes it was caused to pay out, the proportionately  
 17 small difference between the very large totals that you  
 18 mentioned right at the outset this morning and the very  
 19 large totals that I have previously mentioned in  
 20 judgments is the absence now from this trial of  
 21 ED&F Man; is that right?

22 MR RABINOWITZ: Correct, my Lord.

23 MR JUSTICE ANDREW BAKER: Because I had previously got  
 24 a number in mind that it was very close to £1.5 billion,  
 25 we are now talking proportionately a small percentage

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1 below that because of the amount of the 1.5 billion that  
 2 is all ED&F Man, the subject of a separate claim.

3 MR RABINOWITZ: My Lord is right.

4 MR JUSTICE ANDREW BAKER: Thank you.

5 MR RABINOWITZ: Since in order to resolve these key issues  
 6 your Lordship is likely to need by the end of the trial  
 7 to have a detailed understanding of the role played by  
 8 each particular defendant in or in relation to the  
 9 relevant schemes and over what period, as I have already  
 10 noted, I am proposing to spend some time in opening  
 11 trying to identify for your Lordship which defendants  
 12 were involved in what activity as regards what was, we  
 13 say, the commission of a fraud against SKAT.

14 My Lord, although again as I have already noted  
 15 I will cover all three schemes in my opening, it is fair  
 16 to say that I will be spending most of my time on the  
 17 Solo Scheme, and that is perhaps not surprising given  
 18 that, as your Lordship knows, the Solo Scheme accounts  
 19 for around three-quarters of the value of SKAT's claim,  
 20 being 9.025 billion Danish krone out of the total of  
 21 12.09 billion krone losses claimed, so 1 billion out of  
 22 1.5 billion, effectively.

23 And it is also perhaps not surprising I will be  
 24 spending time, subject to your Lordship, mainly on the  
 25 Solo Scheme because, again as your Lordship is aware,

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1 the Solo Scheme is the one in which all the defendants  
 2 actively before your Lordship, with the exception of  
 3 Lindisfarne, are alleged to have participated.

4 MR JUSTICE ANDREW BAKER: Yes.

5 MR RABINOWITZ: Again, I'm trying to be careful, because I'm  
 6 trying to be as neutral as possible, that is where the  
 7 pattern was established as to what needed to be done.

8 MR JUSTICE ANDREW BAKER: Yes, and one reason why, for the  
 9 exercise you are going to come on to at some point  
 10 today, that I raised last week, that is why for the  
 11 purposes of an initial slightly more close walk through  
 12 the way the thing was set up to work or not as the case  
 13 may be, it seems to me provisionally one could  
 14 meaningfully take the first of the first Solo model  
 15 variants because we probably can meaningfully conduct  
 16 the trial on the basis that if we all understand the  
 17 explanation that SKAT gives to that and any rival  
 18 nuances or explanations of that, one can then operate to  
 19 some extent on the basis that when one then turns to  
 20 Maple Point, it was set up to work essentially in the  
 21 same way as that Solo model except that there were the  
 22 following twists, or Solo model variants to, one twist  
 23 or change was they went to forwards rather than futures,  
 24 for example one can—

25 But that which SKAT says about it, which SKAT says

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1 means it didn't ultimately work, doesn't really change  
 2 as a result of that, as it at least provisionally seems  
 3 to me, that which the defendants collectively say as to  
 4 why they were at least honest in thinking that it did  
 5 work isn't really that much affected by the changes  
 6 although why the changes were made no doubt in the  
 7 normal way may become explored to some extent in  
 8 evidence because there may be indirect ways in which  
 9 those aspects of the history as it developed are alleged  
 10 to be indicators one way or the other of honesty or  
 11 dishonesty. We can get to that.

12 But for understanding what is going on, one probably  
 13 can just focus, at least initially, on that first Solo  
 14 variant so that we all understand what we are looking at  
 15 overall.

16 MR RABINOWITZ: Your Lordship is entirely right about that.  
 17 As your Lordship will have read and we will see the Solo  
 18 2013 model is largely what is adopted by Maple Point.  
 19 The Solo model evolves in 2014 to 2015 in a variety of  
 20 ways so as to become much more complicated, involving  
 21 many more counterparties, but the original 2012–2013  
 22 model is that which is adopted by Maple Point, maybe  
 23 with some changes, but not very many.

24 The Klar Scheme is substantially more simple, so if  
 25 one is able to grasp the 2012–2013 scheme, that does set

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1 everyone up fairly well for the other two schemes your  
 2 Lordship is going to have to look at.

3 Can I just turn then to looking at the 2012–2013  
 4 model and can I begin by again just asking the EPE  
 5 person to get paragraph 90 of our written submissions on  
 6 the screen, that is {F/361/41}.

7 As your Lordship knows, this provides a summary of  
 8 the transaction stages, in the first version of the Solo  
 9 model, in operation 2012–2013. I should just note,  
 10 my Lord, that an almost identical summary is included at  
 11 paragraph 7 of the sample trade summary at {A/95/3}.

12 The only reason I mention it is because that is  
 13 a document which has been agreed with the DWT defendants  
 14 and the Sanjay Shah defendants.  
 15 MR JUSTICE ANDREW BAKER: Yes, and I had reminded myself  
 16 after I got my clerk to send the message to you copied  
 17 to everybody else that cited your opening at 90, that in  
 18 fact your opening at 90 in turn reflected section B1.i  
 19 of the sample trade summary.

20 MR RABINOWITZ: I don't think it matters but I just wanted  
 21 to mention that, because in a sense one is dealing with  
 22 an agreed document.

23 MR JUSTICE ANDREW BAKER: And if after this exercise one  
 24 wants to go back and look at an actual example with the  
 25 identified counterparties and the numbers all worked

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1 through, one can therefore look at in the sample trades  
 2 summary one of those worked examples that is said to be  
 3 representative of this model for the purposes of putting  
 4 flesh on what you are about to go through with me.

5 MR RABINOWITZ: I am going to do precisely that.

6 MR JUSTICE ANDREW BAKER: Thank you.

7 MR RABINOWITZ: And I am going to use it following words  
 8 like "putting flesh on". We will come back to that, but  
 9 it may help if I give people references to both  
 10 documents. I hope I will remember to do that.

11 MR JUSTICE ANDREW BAKER: Yes, thank you.

12 MR RABINOWITZ: So can I, just before taking your Lordship  
 13 through the summary of the sample trade, just make the  
 14 following six preliminary observations going to the  
 15 context in which the activity which we are going to look  
 16 at took place and they are largely not in dispute. To  
 17 the extent they are in dispute I will try and identify  
 18 the extent of that dispute.

19 So they are six. First, as your Lordship will have  
 20 seen, and as we will come on to shortly, although the  
 21 activity through which we are going to go involves  
 22 a number of different apparently independent entities,  
 23 in reality a great many of those entities were owned or  
 24 controlled by individuals who were connected to  
 25 Sanjay Shah, and who had been introduced by him to the

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1 Solo Scheme. That is especially true for the trading  
 2 counterparties of the Solo applicants, whose owners or  
 3 controllers, as my Lord will have picked up or will see,  
 4 were almost all friends, family, ex-colleagues or  
 5 business associates of Sanjay Shah.

6 The position in relation to the Solo applicants  
 7 themselves, who are also obviously involved in this  
 8 scheme, is more nuanced and I will come back to that.

9 Secondly, again as your Lordship will have picked  
 10 up, and again as is not in fact in dispute, although the  
 11 activity through which we are going to go all relates to  
 12 buying and selling Danish shares, or interests in Danish  
 13 shares, in fact none of the buyers, sellers, stock  
 14 lenders or forward parties owned or had any ownership  
 15 interest in any such Danish shares during the relevant  
 16 period.

17 As I say, I don't understand that to be in dispute  
 18 either, although there are some caveats raised by the SS  
 19 defendants, as I have identified.

20 Third, although, as we will come on to, the activity  
 21 was designed so as to give the impression of, as I have  
 22 noted, independent steps taken by independent entities  
 23 interested in trading Danish shares, in reality the  
 24 steps taken by all participants were pre-arranged and in  
 25 fact closely choreographed by someone within the

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Solo Group, for the most part by Mr Patterson, and that as we will come to is accepted by almost all the main defendants with the exception of Sanjay Shah, and we will have to deal with that in due course. It remains to be seen the extent to which this is disputed by the other — I'm going to call them non-main defendants, I hope they will forgive me for that.

Fourth, and again I don't understand this to be in dispute by anyone, the whole purpose of the arrangements that we are about to go through was to enable these purported trades to happen without anyone having to pay any money at all for their participation in the share trading activity, other than the fees of service providers. Indeed, again as my Lord will have picked up, one of the main purposes of this arrangement was to avoid the need for anyone to commit material amounts of money in respect of these purported trades.

That followed, again as your Lordship will have picked up, from Solo's inability in 2011 and 2012 to find external financing which led to the development of the Solo model involving internalised net settlement to zero which required no external funding to buy shares, and that too is common ground.

I'm not going to give your Lordship the references unless your Lordship wants them.

37

MR JUSTICE ANDREW BAKER: And indeed again not meaning by making this sort of observation to overlook the position of other defendants who in their different ways may respectively be saying that they did not have visibility of everything, so they are not necessarily aware they will be saying of, as it were, the overarching scheme or the lightbulb, in a sense what is described by Mr Sanjay Shah as his lightbulb moment is precisely, he says, as I understand it, an understanding or realisation that things can be so structured as not to require any, as it were, externally sourced movement of shares or cash, and yet generate an externally generated payment of a tax reclaim coming in from SKAT at the end of the process.

In a sense therefore it is — at least as regards the Sanjay Shah defendants certainly, and Mr Sanjay Shah in particular, it is positively averred that that was the realisation as to what, overall, the trading model would generate and the battleground at a certain level, taking on board the observations in the written opening that one nonetheless still then has to analyse through whether SKAT has established its causes of action as pleaded. But at a certain level the main factual battleground will be over whether that was or was not an honest moment of realisation or a moment, as SKAT may

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be saying, when people should have said: hang on, that can't possibly be right, or something of that sort.

MR RABINOWITZ: Precisely, my Lord. Can I just make clear, as we understand it, it is not only the Sanjay Shah defendants which accept this, as I understand it, the DWF defendants accept it as well. If I can give your Lordship references — Mr Head when he opens will correct me if I'm wrong — paragraph 193 and 130 {F/381/37} and {F/381/47}.

MR JUSTICE ANDREW BAKER: Yes.

MR RABINOWITZ: Now, the fifth of my preliminary observations, I'm sorry they are taking as long as they are, again there is no dispute about this either, the purported trades that we are going to go through were deliberately instructed on a cum-ex basis. That is to say, they involved particular dates being chosen for particular steps that focused on the buyer in each case entering into trades to buy shares on the date on which actual shareholders in the relevant Danish companies became entitled to a dividend under Danish tax law, that is to say on the declaration date. But at the same time deliberately departing from, and I am trying to use neutral language here, deliberately departing from the standard on exchange settlement cycle so that the trade settled after the record date, which as my Lord knows is

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the date on which VP Securities checked its share register —

MR JUSTICE ANDREW BAKER: Yes.

MR RABINOWITZ: — to identify the persons to whom the payment of dividends would be distributed on the payment date.

Sixth, and this is the final observation — again I don't understand this to be in dispute either — the whole purpose of this activity, and I can only say that for the purposes of those central to the scheme because the people on the outside will have to see the extent to which they understood this, the whole purpose of the trading activity that we are going to look at was to lead to a point when a custodian ultimately owned by Sanjay Shah could produce a credit advice note, or a CAN, or a DCA, that could be submitted by a tax agent to SKAT with a view to making a claim for a refund for tax allegedly withheld.

Can I pause there, your Lordship may well be very familiar with these terms, and I think you are because they emerge from pages 31 and 32 of your judgment, but we have produced a glossary of certain trading terms on a single piece of paper which it may be useful to have, just in case anyone in court, or indeed your Lordship or your Lordship's judicial assistant, might find it

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1 useful. Can I just pause just to hand that up.  
2 (Handed).

3 MR JUSTICE ANDREW BAKER: Yes, of course, thank you.

4 MR RABINOWITZ: It really just has things like what is  
5 a cum—ex trade, what is a cum—cum trade, what is the  
6 declaration date and so on.

7 MR JUSTICE ANDREW BAKER: As with all such things, at some  
8 appropriate point if a digital copy of that can also be  
9 provided through my clerk. In fact, having just  
10 mentioned that, might I also say to everybody in the  
11 case if I have not already received it, and in respect  
12 of this type of communication nobody needs to copy  
13 everybody else in, I would like to have a clean Word  
14 copy, if such a thing exists, of each set of written  
15 opening submissions, for my own purposes.

16 I think I may have one from the DWF defendants,  
17 although something odd has happened with the — I can't  
18 make it look clean, Mr Head. I don't know if you  
19 understand what I mean by that. I have the version in  
20 which some small corrections were made to the version  
21 originally served that says it is the clean version, but  
22 it still seems to have some track changes in it and  
23 I can't get rid of those, but that is a very minor  
24 issue.

25 So I may have one or two already in Word, but for

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1 future purposes to be able to quote quickly how things  
2 were put by different parties it is always helpful for  
3 the judge to have a Word copy, if I can have that at  
4 some point through my clerk, thank you.

5 MR RABINOWITZ: My Lord, with that introduction, I was going  
6 to invite your Lordship, if your Lordship wanted to, to  
7 re—read paragraph 90 of our written submissions and  
8 paragraph 7 of our sample trade summary, I don't know if  
9 your Lordship wants to take the time just to do that?

10 MR JUSTICE ANDREW BAKER: No, don't worry, I have been  
11 looking at it enough on and off, alongside all the  
12 written openings, that I am very happy for you to launch  
13 in a little to the detail.

14 MR RABINOWITZ: I'm grateful, my Lord.

15 My Lord, we have a basic illustration of this first  
16 version of the standard trading model at {B/45.1/1}.  
17 I wonder if we could just go to that. Thank you. Now,  
18 I should just note about this that it is agreed with the  
19 SS defendants and the DWF defendants in the sample trade  
20 summary at paragraph 7, that this does indeed represent  
21 a basic illustration of the trading model. As your  
22 Lordship can see, this broadly reflects the steps  
23 summarised in paragraph 90 of our written submission.  
24 If we can just go through this, starting first with the  
25 equity trades shown in the middle line.

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1 MR JUSTICE ANDREW BAKER: Yes. And just one reason, just so  
2 you are aware, I suspect what I am about to say will fit  
3 neatly enough with how you were about to take me through  
4 things, but one reason I was keen to do this exercise  
5 right at the outset is because of course we are all  
6 conscious that any diagram of this sort ultimately seeks  
7 to represent the totality of everything that happens,  
8 looking backwards after it has all happened, when what  
9 in fact happens is that various elements happen in  
10 a sequential series of steps at different times and it  
11 is important therefore just to walk through and unpack  
12 how the trading model, taken at face value, operates or  
13 purports to operate, as it were, one step at a time.  
14 Because there may be some questions I have got for you,  
15 as it were, at a — well, before we then come on to what  
16 is going to happen in the future in terms of closing  
17 things out, on its face the position we have now created  
18 at this point is X, Y or Z, if you see what I mean.

19 MR RABINOWITZ: Understood, yes.

20 MR JUSTICE ANDREW BAKER: Thank you.

21 MR RABINOWITZ: I will obviously highlight the dates when  
22 these transactions take place. If we just look at the  
23 equity trades in the middle line of the top diagram,  
24 involving a buyer, an equity broker and a short seller,  
25 what happens in this part of the transaction, again as

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1 the diagram shows, is that the short seller in the  
2 orange block on the right—hand side of the diagram sells  
3 to the equity broker in the middle, the blue block in  
4 the middle, who sells to the buyer on the left—hand side  
5 of the diagram.

6 MR JUSTICE ANDREW BAKER: Yes.

7 MR RABINOWITZ: As your Lordship saw from paragraph 90.1 of  
8 our written submissions, it's paragraph 7.1 of the  
9 sample trade summary, the equity trade shown on the  
10 middle line occurred on the declaration date, which is  
11 the working date before the ex—date, applicable to the  
12 relevant Danish dividend declaring companies. In each  
13 case, again as I have noted, I think, settlement was  
14 fixed to take place the day after the record date. That  
15 is on the payment date.

16 MR JUSTICE ANDREW BAKER: Yes. And it goes without saying  
17 for those of us in the room, but just so that it is said  
18 anyway, that the entity identified here as buyer will be  
19 the entity that in due course claims to have suffered  
20 a withholding and therefore makes, through a tax reclaim  
21 agent, a WHT refund application to SKAT.

22 MR RABINOWITZ: Precisely that, my Lord.

23 MR JUSTICE ANDREW BAKER: Yes, all right.

24 MR RABINOWITZ: So in this transaction, just looking at the  
25 equity broker for a moment, the equity broker acts as

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1 match principal or agent. It doesn't matter which for  
2 practical purposes and we have sought to explain why at  
3 paragraph 38.1 of our main skeleton. I'm not going to  
4 go through that now. I just give the punchline. The  
5 broker only ever traded on back-to-back terms in  
6 respect of the same Danish shares at the same price for  
7 settlement on the same date, and the brokers only traded  
8 with Solo clients, being prohibited from trading, under  
9 the Solo model, with any external parties. The latter  
10 arises out of Mr Sanjay Shah's evidence, for your  
11 Lordship's note at paragraph 499. I'm not suggesting we  
12 go there now.

13 So you have this closed system with a broker showing  
14 that the trading was on back-to-back terms.

15 Now, again, as we explain at paragraph 90.4 of our  
16 written submissions, the equity trades, so that's the  
17 middle line, were immediately given up by the broker to  
18 SCP, that is the sole Solo custodian at the time, which  
19 meant in effect that SCP would take over the settlement  
20 execution obligations that would otherwise be for the  
21 broker.

22 MR JUSTICE ANDREW BAKER: Yes.

23 MR RABINOWITZ: In his third report, Mr Sharma, the DWF  
24 defendants' expert describes give up arrangements as  
25 being a novation of the party to whom the trade is given

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1 up into the position of the original contracting party.  
2 Your Lordship I think is familiar with this from the  
3 validity trial, that is paragraph 5.7.1 to 5.7.3 of  
4 Mr Sharma's report. The same language in relation to  
5 novation is used by the DWF defendants in their written  
6 submissions, that's at paragraph 386.1.

7 Just going back to the diagram, SCP in effect steps  
8 into the position of the equity broker and therefore  
9 becomes the interface between the buyer and the short  
10 seller.

11 MR JUSTICE ANDREW BAKER: Yes.

12 MR RABINOWITZ: That is the first step down the middle line  
13 of the top diagram.

14 MR JUSTICE ANDREW BAKER: All right, and therefore that's  
15 the first point at which I pause you to say — and all  
16 of my questions will be questions that are asking and  
17 are to be answered on a — taking the transaction terms  
18 as documented at face value, leaving to one side for  
19 that purpose that aspect of SKAT's argument in due  
20 course, as we will say that once you have understood the  
21 totality of the picture, you end up, you are going to  
22 submitting in due course, with an argument as to whether  
23 this is to be treated as real or sham trading in the  
24 first place.

25 But in a sense, for all sorts of reasons, including

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1 in part in due course testing that very argument, just  
2 taking what the transactions appear to be providing for,  
3 that first equity trade in itself is made on a cum-div  
4 date and will therefore have been at a cum-div price, as  
5 I understand it. On our actual facts, will those prices  
6 be, if I can put it this way, real world prices; ie that  
7 part of the trading model will be to operate by  
8 reference to real world Danish exchange prices to price  
9 the equity trade?

10 MR RABINOWITZ: At that stage of the transaction, yes.

11 MR JUSTICE ANDREW BAKER: Yes. And the pricing will be  
12 back-to-back between seller, broker, acting as agent or  
13 match principal, or buyer, obviously.

14 MR RABINOWITZ: Yes, and we will see that on one of the  
15 models we are going to look at later.

16 MR JUSTICE ANDREW BAKER: And other things being equal,  
17 therefore, so the same assumption on which these  
18 questions arise as to what this trading on its face  
19 purports to provide for, that equity trade as entered  
20 into obliges physical settlement, delivery versus  
21 payment, or DVP, as discussed in my validity issues  
22 judgment, on record date plus 1, which would be, if it  
23 happened, an exchange on record date plus 1 of the  
24 price, P, put up in cash by the buyer —

25 MR RABINOWITZ: Yes.

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1 MR JUSTICE ANDREW BAKER: — against a transfer to the buyer  
2 of shares, by one means or other, put up by the seller  
3 for delivery ultimately to the buyer, and which in  
4 Danish company law terms, at least if I am still  
5 operating on the basis of the analysis I gave it in the  
6 validity issues judgment, those will necessarily be, if  
7 they existed and were put up by the seller and were  
8 transferred but only on the record date plus 1 ex-div  
9 shares at the point at which they are transferred.

10 MR RABINOWITZ: Correct.

11 MR JUSTICE ANDREW BAKER: Now, as a matter of contract in  
12 the equity trade, does the buyer have a contractual  
13 right — I mean, one way of testing it, assume there is  
14 nothing else involved. That in fact — that trade in  
15 fact is all that there was and it settled DVP, the  
16 seller who had been short — I mean, let's not even get  
17 into stock lending — actually managed to acquire  
18 outright — on a non-standard, instantly settled trade  
19 with a big bank, actually bought in the shareholding it  
20 had promised to sell and that got delivered, that would  
21 be a delivery of that shareholding in return for the  
22 full contractual price.

23 MR RABINOWITZ: Yes.

24 MR JUSTICE ANDREW BAKER: In the meantime, a dividend has  
25 been declared on the same dividend declaration date on

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1 which the equity trade was put on. The buyer, as  
 2 I would be provisionally understanding it, has some  
 3 species then, implied if not express, based on the date  
 4 on which the trade is done, of contractual entitlement  
 5 to a payment — let me put it neutrally — a payment  
 6 reflecting the dividend that has been declared and  
 7 circulated, because one consequence of that settlement  
 8 completion, as an old-fashioned English lawyer might  
 9 call it, one consequence of that completion of that  
 10 trade occurring on record date plus 1 is that buyer is  
 11 not going to be recipient in the ordinary course of the  
 12 waterfall of payment coming out from the company to  
 13 VP Securities and so on. So at least contractually one  
 14 assumes it has some right to some kind of balancing or  
 15 compensation payment.  
 16 MR RABINOWITZ: My Lord, yes.  
 17 MR JUSTICE ANDREW BAKER: A question I have is: is that  
 18 a contractual right to the net dividend amount or the  
 19 gross dividend amount? You don't necessarily need to  
 20 give me an answer, but at some stage that might be worth  
 21 thinking about. As it seems to me the way — the way  
 22 things are subsequently documented —  
 23 MR RABINOWITZ: It's gross.  
 24 MR JUSTICE ANDREW BAKER: — appears to treat it as a right  
 25 only to the net amount, because that is what is then

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1 treated as a payment between the parties. But that may  
 2 be wrong.  
 3 MR RABINOWITZ: Well, it may be wrong, but — again, I'm not  
 4 going to give your Lordship a complete answer to the  
 5 question, but another way of looking at it is that it is  
 6 an entitlement to the gross amount, less — in other  
 7 words you have a contractual entitlement to the gross  
 8 amount, less tax, which may be coming to the same thing,  
 9 to be deducted.  
 10 MR JUSTICE ANDREW BAKER: And then the related question, for  
 11 what it is worth, because of course we all appreciate  
 12 that — or at least I think we all appreciate in court  
 13 that what we are dealing with for the purposes of this  
 14 trial is a structured trading model in which what you  
 15 and I are currently debating doesn't end up happening.  
 16 But, if it had been, in the sense I have just described,  
 17 just that equity trade and nothing else ever happened  
 18 other than a settlement DVP, would the buyer be entitled  
 19 to set off its contractual entitlement to  
 20 a dividend-related amount, to put it neutrally, against  
 21 the purchase price, so that actually to achieve  
 22 settlement it wouldn't have to put up the purchase price  
 23 in full. Strictly, it would be entitled to put up  
 24 purchase price less the dividend amount to which it is  
 25 entitled.

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1 MR RABINOWITZ: Yes.  
 2 MR JUSTICE ANDREW BAKER: Albeit there would no doubt then  
 3 need to be careful book-keeping entries to keep a track  
 4 of exactly what has happened. That is another question  
 5 that occurs to me.  
 6 MR RABINOWITZ: I'm not going to answer them now, but I just  
 7 want to identify what the questions are. The first  
 8 question is on the assumption, and I think this must be  
 9 right, that there is a contractual right to a payment,  
 10 in respect of the dividend, is that a contractual right  
 11 to the payment of the dividend gross or net.  
 12 MR JUSTICE ANDREW BAKER: Yes.  
 13 MR RABINOWITZ: And there may be nuances between the two.  
 14 The second question that arises is that on the basis  
 15 whether the entitlement is to gross or net, can that  
 16 contractually be set off.  
 17 MR JUSTICE ANDREW BAKER: So that one could make what you  
 18 and I, as old-fashioned sale contract lawyers, might  
 19 call — one could make a valid tender of the price by  
 20 tendering in cash only P minus D, where P is the full  
 21 contractual price and D is the dividend-related  
 22 entitlement, be that the gross dividend amount or the  
 23 net dividend amount.  
 24 MR RABINOWITZ: My instinct contractually — and I'm sure  
 25 I will be kicked under the table from the back so please

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1 don't hold this against me — is that if it is a mere  
 2 matter of contract, subject to particular implied terms  
 3 which may arise by virtue of Danish law, there is no  
 4 reason why you shouldn't be able to set off because  
 5 there would be two debts due in different directions.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: But again, I can't, off the top of my head,  
 8 say to your Lordship that that is an answer that your  
 9 Lordship can rely on.  
 10 MR JUSTICE ANDREW BAKER: Yes. The subtlety would  
 11 potentially be whether, on a true analysis of that,  
 12 taking it at face value as a set of contractual  
 13 obligations, you accrue or acquire the entitlement to  
 14 the dividend-related contractual payment only by  
 15 completing, and to complete you have to have tendered  
 16 the full purchase price.  
 17 MR RABINOWITZ: That is (inaudible — overspeaking).  
 18 MR JUSTICE ANDREW BAKER: And would that in fact, as  
 19 a matter of English law set-up analysis, affect the  
 20 ability to call them mutual debts capable of set-off, in  
 21 order to achieve the very completion of the transaction  
 22 that gives rise to one of the two entitlements.  
 23 MR RABINOWITZ: So just putting it in a way that I, with my  
 24 simple way of thinking, understand. The third question  
 25 that arises, or at least the question that arises in the

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1 context of the set-off is: is the dividend amount due  
 2 and payable prior to the point at which the amount  
 3 payable for the shares has been paid.  
 4 MR JUSTICE ANDREW BAKER: Yes, quite. All right, thank you.  
 5 So at that point one then moves in chronological  
 6 sequence, as it were, to the futures —  
 7 MR RABINOWITZ: The futures (inaudible — overspeaking).  
 8 MR JUSTICE ANDREW BAKER: — that are put on at about the  
 9 same time.  
 10 MR RABINOWITZ: Precisely. That is the one described at the  
 11 top of this diagram. As your Lordship sees from the  
 12 diagram, the futures trade involved futures being sold  
 13 from the buyer.  
 14 MR JUSTICE ANDREW BAKER: Yes.  
 15 MR RABINOWITZ: Also the WHT applicant, as your Lordship  
 16 pointed out earlier, again on the left-hand side. So  
 17 future — involving futures sold from the buyer to  
 18 a futures broker, green in the middle.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: And then on to the short seller, shown on  
 21 the right, again in orange. And again, as we have  
 22 explained at paragraph 90.2 of our written submissions,  
 23 paragraph 7.2 of the sample trade summary, the futures  
 24 transactions were entered into on the same date as the  
 25 equity trades, as I think your Lordship suggested to me,

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1 that is to say on the declaration date.  
 2 MR JUSTICE ANDREW BAKER: Yes.  
 3 MR RABINOWITZ: And these transactions related to the same  
 4 quantity of the same Danish shares as the equity trades.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: And they were for settlement a number of  
 7 weeks or months later.  
 8 MR JUSTICE ANDREW BAKER: And again in the trading model,  
 9 that's done back-to-back as to price, that is to say  
 10 buyer sells futures to the intermediate party,  
 11 intermediate party sells future to seller at the same  
 12 futures price.  
 13 MR RABINOWITZ: Precisely.  
 14 MR JUSTICE ANDREW BAKER: And is that futures price also, as  
 15 it were, taken on the facts from real world market data  
 16 because there will have been an active futures market,  
 17 I assume, in relation to these listed Danish shares, or  
 18 is it a price that is a calculated price derived from,  
 19 ie by the parties putting this together, calculated from  
 20 the equity trade price, it may or may not be with or  
 21 without some involvement of the anticipated or actual  
 22 dividend declared?  
 23 MR RABINOWITZ: I'm going to suggest an answer but we will  
 24 check it.  
 25 MR JUSTICE ANDREW BAKER: Subject to checking.

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1 MR RABINOWITZ: It is the latter.  
 2 MR JUSTICE ANDREW BAKER: Subject to checking, you think  
 3 that the futures price by reference to which that  
 4 back-to-back pair of futures is put on, is itself, as it  
 5 were, a calculated byproduct of the pricing that has  
 6 been chosen of the equity trade?  
 7 MR RABINOWITZ: Precisely, rather than taken from the model.  
 8 MR JUSTICE ANDREW BAKER: It may be taken in conjunction, in  
 9 some direct or indirect way, with the amount of the  
 10 dividend?  
 11 MR RABINOWITZ: Precisely.  
 12 MR JUSTICE ANDREW BAKER: All right. But again on the same  
 13 basis as we have been otherwise — other things being  
 14 equal, and taking them at face value as transactions for  
 15 these purposes, those represent, essentially,  
 16 straightforward pricing hedges for, if one can focus on  
 17 the buyer's position, a buyer who is just committed on  
 18 the face of things to buy some shares at a certain  
 19 price. Those are shares that have a market price that  
 20 will move up and down, so in terms of exposure to the  
 21 market price they have become long, they now have a long  
 22 exposure position on their exposure to the market price  
 23 of the share they have referenced, from the moment they  
 24 enter into the trade, the equity trade. By selling  
 25 futures in the same volume they are attempting simply to

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1 hedge that market price movement exposure created for  
 2 them by their long position.  
 3 MR RABINOWITZ: My Lord, yes.  
 4 MR JUSTICE ANDREW BAKER: And therefore that being its, as  
 5 it were, transactional function, in and of itself  
 6 am I right to think that the futures trades have no  
 7 involvement or affect as regards how, if at all, the  
 8 delivery versus payment obligations created by the  
 9 equity trade are or are not going to be performed on  
 10 record date plus 1.  
 11 MR RABINOWITZ: Yes, my Lord.  
 12 MR JUSTICE ANDREW BAKER: They are purely in relation to  
 13 hedging out the price movement exposure.  
 14 MR RABINOWITZ: Yes.  
 15 MR JUSTICE ANDREW BAKER: And I will say this, if only so  
 16 that it is observed, obviously a potential question  
 17 observes in the context in due course of the sham  
 18 trading allegation, why one bothers to do that, if this  
 19 is all a sham.  
 20 MR RABINOWITZ: I will come back to it.  
 21 MR JUSTICE ANDREW BAKER: Because on one view, bothering to  
 22 enter into, albeit matched players, albeit in all the  
 23 way SKAT says as part of an overall trading model that  
 24 will eventually all net out to zero, but it might be  
 25 said that the reason one bothers to hedge out the price

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1 exposure is because you think you are exposed.  
 2 MR RABINOWITZ: Or you want to give the appearance of  
 3 thinking you (inaudible — overspeaking).  
 4 MR JUSTICE ANDREW BAKER: All right, and that may be the way  
 5 in which that argument then has to be looked at. All  
 6 right.  
 7 MR RABINOWITZ: We will submit in due course that that is in  
 8 fact what was going on. Things become clearer as one  
 9 gets into the 2014 story.  
 10 MR JUSTICE ANDREW BAKER: All right, thank you, fine.  
 11 MR RABINOWITZ: Then the third step involved, and this goes  
 12 to the bottom part of the top diagram, if I can put it  
 13 that way, is the stock loan aspects.  
 14 MR JUSTICE ANDREW BAKER: Yes.  
 15 MR RABINOWITZ: There you have the buyer, the WHT applicant,  
 16 in orange on the left — hand side, lending shares to the  
 17 stock lender, at the bottom, in purple.  
 18 MR JUSTICE ANDREW BAKER: Yes.  
 19 MR RABINOWITZ: Which then lends them on to the short  
 20 seller, in orange on the right — hand side again, so  
 21 buyer, back to seller, through stock loan entity. And  
 22 again, as your Lordship will recall, we say at  
 23 paragraph 90.3 of our written submissions the stock  
 24 loans were entered into a few days after the time when  
 25 the first few steps were taken, so on the day after the

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1 record date, and again they related to the same quantity  
 2 of the same Danish shares as the equity trades and the  
 3 stock loans were for settlement on the same day as the  
 4 equity trades, that is on the payment date, and the  
 5 amount of the cash collateral matched the price on the  
 6 equity date, that despite the market price of the shares  
 7 having changed by the time of the stock loan, not least  
 8 because the shares are now ex — dividends, and your  
 9 Lordship may recall that was a point which I think was  
 10 made by the experts, or our expert at least, in the  
 11 validity trial.  
 12 MR JUSTICE ANDREW BAKER: Yes, so that is cash collateral  
 13 equal to the full original equity trade price that one  
 14 might find oneself in a judgment summary of all of this  
 15 calling P, all right. But I'm right, aren't I, also, or  
 16 am I right, that the logic underlying all of this is  
 17 such that it may be that on the facts, which I think is  
 18 what you have said in the written opening, that matched  
 19 pair of stock lending trades is put on either on the  
 20 record date or on record date plus 1 but either way for  
 21 settlement on record date plus 1, the same day as the  
 22 equity trade is prima facie supposed to be settling.  
 23 The logic of the trading model in fact only requires  
 24 that that is a share, a pair of share lending  
 25 transactions that is put in place on or after the

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1 ex — date and on or before the settlement date, with  
 2 a settlement date of record date plus 1.  
 3 MR RABINOWITZ: Yes.  
 4 MR JUSTICE ANDREW BAKER: So if for whatever reason you  
 5 happened to do the same model and your equity trade at  
 6 step one had been for settlement on record date plus 7  
 7 rather than record date plus 1, you could replicate all  
 8 of this and all that would matter, other things being  
 9 equal, as regards the stock lending, is that you have  
 10 that put in place as a pair of trades at some point  
 11 between the ex — date and record date plus 7 for  
 12 settlement on record date plus 7. Unless there is some  
 13 additional subtly about making the settlement beyond the  
 14 payment date.  
 15 MR RABINOWITZ: I think there might be, because the buyer is  
 16 undertaking to provide a stock loan to provide shares to  
 17 the seller. If that completed prior to the point in  
 18 time —  
 19 MR JUSTICE ANDREW BAKER: I said — but no, always making  
 20 sure that your settlement of the share loan was also the  
 21 same as your settlement date of the equity trade. So if  
 22 you had decided to do equity trade settlement record  
 23 date plus 7 —  
 24 MR RABINOWITZ: Absolutely, sorry, I —  
 25 MR JUSTICE ANDREW BAKER: — the trade — the trade for the

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1 stock loans could be put in place at any point between  
 2 ex — date and record date plus 7 for settlement on record  
 3 date plus 7 and this model would still work in the same  
 4 way, or not work in the same way, as the case may be.  
 5 MR RABINOWITZ: Exchange can be any time, completion has to  
 6 be the same date.  
 7 MR JUSTICE ANDREW BAKER: Thank you.  
 8 MR RABINOWITZ: And then just pausing there, my Lord, the  
 9 theory behind the model, we have now had the three  
 10 steps, the theory behind the Solo model goes that  
 11 because the buyer and the sellers have equal and  
 12 opposite obligations in terms of share delivery and cash  
 13 payments, albeit via different intermediaries, in the  
 14 one case via the equity broker and the other case via  
 15 the stock loan entity, and because everyone shares  
 16 a single custodian, which at this stage was SCP, it is  
 17 said that the trades were internally settled, net  
 18 settled, without the need for anyone to effect  
 19 a physical delivery of any shares or provide any cash.  
 20 MR JUSTICE ANDREW BAKER: And then just taking two  
 21 additional points on the stock lending stage of this  
 22 trading model, as it were, at the point prior to the  
 23 settlement or net settlement or whatever it comes to be,  
 24 when put on, were they stock loans with a defined  
 25 duration or were they stock loans that were terminable

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1 on notice by the lender or the like?  
 2 MR RABINOWITZ: They had a duration. We will look at  
 3 a sample and I will show your Lordship that.  
 4 MR JUSTICE ANDREW BAKER: And was that a duration that was  
 5 related to the futures, subsequently forward trade end  
 6 date or in some sense independent of that, or does it  
 7 not matter?  
 8 MR RABINOWITZ: To some extent it didn't matter, because it  
 9 was always going to unwind, as we will see when we get  
 10 to the fourth step.  
 11 MR JUSTICE ANDREW BAKER: In a similar way to how I was  
 12 just, for completeness, analysing how the equity trade  
 13 would work if that is all you had, as it were by parity  
 14 if you only had the stock lending and there was no  
 15 equity trading relating — involving the same parties  
 16 already in place, if this was simply buyer trading to  
 17 lend shares to a stock loan intermediary operating on  
 18 a back-to-back basis, trading to lend the same volume of  
 19 shares to seller, the nature of the stock lending trades  
 20 at face value are trades under which the seller party —  
 21 in your written opening you have referred to them  
 22 generally as the short seller party — has now become,  
 23 on the face of things, entitled to receive a transfer of  
 24 shares by way of stock loan on the settlement date,  
 25 record date plus 1, but only if it can put up P, our

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1 cash — in this context, our cash collateral amount, to  
 2 do an exchange to receive the transfer by way of stock  
 3 loan and the buyer has undertaken equivalent opposite  
 4 obligations to deliver that volume of shares by way of  
 5 stock loan in exchange for a tender of the cash — the  
 6 amount, P, but tendered to it by way of cash collateral  
 7 for a stock loan.  
 8 MR RABINOWITZ: Indeed. I think the only other thing to  
 9 think about in that context is the give-up to the  
 10 custodian.  
 11 MR JUSTICE ANDREW BAKER: Yes. But that ultimately affects  
 12 the identity of the party —  
 13 MR RABINOWITZ: Precisely. It is a novation, but the  
 14 obligation —  
 15 MR JUSTICE ANDREW BAKER: The nature of the obligation is  
 16 that. All right.  
 17 Mr Rabinowitz, this has been extremely helpful and  
 18 I appreciate that it is probably taking a little time,  
 19 but I did feel that doing this exercise as setting the  
 20 scene in a sense for everything that follows was of  
 21 value in what is going to be this very long trial.  
 22 We should take our mid-morning break at that point.  
 23 Unless there is anything more you were going to say on  
 24 that stage, it seems to me where we would want to move  
 25 then is to what then happens on the record date,

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1 including the process of what book-keeping entries are  
 2 made to reflect what is said then to be the net  
 3 settlement process that happens.  
 4 MR RABINOWITZ: What I was going to do, subject to your  
 5 Lordship, was take your Lordship through the fourth step  
 6 of the unwind. I will show your Lordship — I will put  
 7 flesh on this, if I can put it that way.  
 8 MR JUSTICE ANDREW BAKER: I will leave — I am quite keen,  
 9 as we have done it in sequence, to get my head properly  
 10 round, before we get to the unwind, which I appreciate  
 11 SKAT will be saying was always in everybody's mind, or  
 12 at least everybody that had visibility of the whole  
 13 model always had it in mind that there would  
 14 subsequently be an unwind, but I am quite keen, before  
 15 one gets to the unwind, which is a separate and later —  
 16 MR RABINOWITZ: It is.  
 17 MR JUSTICE ANDREW BAKER: — matter, of the — I am keen to  
 18 get my head around the — at least to some extent the  
 19 practical implications of the book-keeping entries made  
 20 on record date plus 1 that is said to constitute the net  
 21 settlement relied on by SKAT, as I understand it, as  
 22 indicating that in substance nobody has ever paid  
 23 anything and no shares have ever moved, relied on by  
 24 defendants collectively at least as having been thought  
 25 at the time to represent meaningfully a settlement of

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1 trades with interests passing. Because I'm interested  
 2 to know in particular the extent to which, in this net  
 3 settlement process where things are netting to zero, to  
 4 what extent were equal and opposite book entries by way  
 5 of cash or securities positions made, to what extent  
 6 were they not made at all because they were simply  
 7 treated as having netted off and therefore they didn't  
 8 even generate —  
 9 MR RABINOWITZ: Nothing happened.  
 10 MR JUSTICE ANDREW BAKER: — entries in an account  
 11 anywhere — and for these purposes what I mean by an  
 12 account, I appreciate is the account records created by  
 13 and at the custodian of cash or securities positions.  
 14 It is by way of those account records purportedly  
 15 holding for or with custodian clients.  
 16 Very good.  
 17 MR RABINOWITZ: Understood.  
 18 MR JUSTICE ANDREW BAKER: Thank you. We seem to have  
 19 a clock on the wall, which is the habit in this  
 20 building, running somewhat fast. My laptop reckons it  
 21 is 11.35, so let's say 11.45, please. Thank you very  
 22 much.  
 23 (11.35 am)  
 24 (A short break)  
 25 (11.48 am)

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1 MR JUSTICE ANDREW BAKER: Yes, Mr Rabinowitz, thank you.  
 2 MR RABINOWITZ: I'm going to take your Lordship to some of  
 3 the internal accounting in a moment. Can I just correct  
 4 something I said.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: And confirm something I said as well. In  
 7 terms of the stock loans, I think I said they had a date  
 8 in fact that was incorrect, they are open, so they are  
 9 recallable, in theory, at any time.  
 10 MR JUSTICE ANDREW BAKER: Yes. I wondered if that might be  
 11 the case, because I saw the language being used —  
 12 I know I'm jumping ahead now, but when we get to the  
 13 unwind phase I saw the language being used of recall,  
 14 rather than anything else. I did wonder if that was  
 15 not, as it were, an equal and opposite fresh trade but  
 16 rather an operation of the existing trade which  
 17 therefore perhaps implied that it had been terminable  
 18 rather than a fixed duration in the first place.  
 19 All right, thank you.  
 20 MR RABINOWITZ: So far as the future pricing was concerned,  
 21 it was as I suggested it was, that is to say the price  
 22 was determined in a sense internally rather than by  
 23 reference to the market.  
 24 MR JUSTICE ANDREW BAKER: Thank you.  
 25 MR RABINOWITZ: In terms of internal documentation, can

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1 I invite your Lordship to go, please, to a spreadsheet  
 2 that we have, I think Mr Goldsmith is going to deal with  
 3 the EPE, at {MTKC1/607} which is the custodian SCP's  
 4 material — sorry, internal documentation.  
 5 What I am going to be able to show your Lordship are  
 6 entries for the buyer, and entries in respect of the  
 7 stock loan as well. We don't have all the entries but  
 8 in a sense this reflects — your Lordship identified two  
 9 possibilities, one is that there was nothing, the other  
 10 is there was something which was entered into, I will  
 11 show your Lordship that it is the something that was  
 12 entered into which is right.  
 13 If we can go into this first to the cash equity tab,  
 14 your Lordship sees looking at rows 205, 206, just take  
 15 that as an example, the example we were looking at, TDC,  
 16 7 August 2013, your Lordship sees a debit to the buyer's  
 17 account of 209—odd million Danish krone, so buying on  
 18 the 7th for completion on the 13th. Your Lordship sees  
 19 those two entries. The first, it is rows C and D  
 20 I think, and if your Lordship goes across to row L, your  
 21 Lordship can see the debit which matches the price.  
 22 MR JUSTICE ANDREW BAKER: Yes.  
 23 MR RABINOWITZ: Reflecting the fact that there was no money  
 24 in the buyer's account, so the full amount gets debited.  
 25 What your Lordship can also see, if we can go to the

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1 statement, is the dividend being credited, if we go to  
 2 row 106, your Lordship sees, again for TDC, row, is it  
 3 J, your Lordship sees the crediting of an amount.  
 4 MR JUSTICE ANDREW BAKER: Column J, yes.  
 5 MR RABINOWITZ: In respect of the dividend.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: Now, in terms of the stock loan, we will  
 8 come back to it. We couldn't find the entry for the  
 9 stock loan for this TDC trade, but we do think it is  
 10 there; we just weren't able to locate it. This  
 11 particular spreadsheet is not easy to navigate, my Lord.  
 12 What I think your Lordship can take away from  
 13 this — and we will come back to the other entries once  
 14 we have more time to, these ones we could find; the  
 15 other ones because of some difficulty getting into the  
 16 spreadsheet we were not able to locate — is that the  
 17 trades are reflected in the custodians' books in respect  
 18 of purchase by the buyer where he has debited an amount,  
 19 doesn't have any money so the full amount is debited,  
 20 and credited to his accounts are the dividend.  
 21 MR JUSTICE ANDREW BAKER: But in — I need to be careful,  
 22 because the answers may in part depend on whether these  
 23 are accounting entries for which in and of themselves,  
 24 as it were, an accrual—type convention like ordinary  
 25 book—keeping for a business is being operated or whether

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1 these are in the nature only of, as it were, pure cash  
 2 accounts.  
 3 Because the equity trade — because the equity trade  
 4 is put on, on trade date not later than the day before  
 5 the ex—date, in fact usually done on the dividend  
 6 declaration date, the last cum—div trading day, but your  
 7 stock lending trades, come what may, are not going to be  
 8 put on as trades until at least one if not more trading  
 9 days later and then going to be given the same  
 10 settlement date, are those entries — so as a for  
 11 instance that entry that Mr Goldsmith first navigated to  
 12 showing buyer being debited an amount of nearly 210 —  
 13 that is million krone, I assume — which is a purchase  
 14 price amount, is that then an entry that is made on the  
 15 trade date showing a — by way, as it were, of an  
 16 accounting record of, taking things again at face value,  
 17 a payment obligation falling due on 13 August 2013,  
 18 settlement date, or is that in the nature of a, at least  
 19 again taking it at face value, cash movement entry that  
 20 is therefore only posted on the settlement date on which  
 21 date it will be equaled and matched by a crediting entry  
 22 of the same amount described as being the receipt of  
 23 cash collateral on the stock loan.  
 24 MR RABINOWITZ: I don't know the answer to that, my Lord.  
 25 I will have to come back to you.

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1 MR JUSTICE ANDREW BAKER: Because it may be that that detail  
 2 is necessary to answer what I had been thinking were  
 3 going to be my questions and it maybe therefore we can  
 4 move on, but just so I have identified them, what I was  
 5 trying to get into my head as a picture is whether when  
 6 you then get to the settlement or completion date as on  
 7 the face of things stated by these different  
 8 transactions, the record date plus 1, are you on that  
 9 date — in some record-keeping sense, are you crediting  
 10 as a cash payment made that day to the buyer the cash  
 11 collateral being, by this sequence of book entries, as  
 12 it were treated as posted by the — posted in favour of  
 13 the buyer and simultaneously debiting the buyer that  
 14 same amount so that if one showed it the equivalent in  
 15 this context of a simple retail banking current account,  
 16 you know, you would find a nil balance at the start of  
 17 the day and then receive cash collateral, x hundred  
 18 million krone, pay out exactly the same amount by way of  
 19 share purchase price, end of day, surprise, surprise,  
 20 balance still zero, or is it more complex than that?  
 21 And then, as it were, the equivalent question in  
 22 relation to the custody of securities, are there account  
 23 records created in which — but ultimately in one sense  
 24 simultaneously and so as to be — so as to cancel each  
 25 other out, that the buyer is both credited with

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1 receiving shares and debited with transferring shares  
 2 which are being, in a sense, recorded as the completion  
 3 of the sale in and the stock loan out, or is it  
 4 more case where these other entries are made that record  
 5 accurately enough on their face what each different  
 6 transaction in itself purportedly creates but in terms  
 7 of a custody record of "here are the shares we hold in  
 8 custody for you" either there is simply no such record  
 9 at all, or it something that just always shows a nil  
 10 balance throughout?  
 11 MR RABINOWITZ: I don't know the answer to that but we will  
 12 look for that, my Lord.  
 13 MR JUSTICE ANDREW BAKER: That is the level of detail at  
 14 which at some point I might be assisted further in this  
 15 opening phase of the trial just to have that unpacked  
 16 for me, because what I then have in mind very much is  
 17 that is the practical outworking as at least I'm now  
 18 able to see it — again putting to one side the  
 19 different defendants' positions as to how much of that  
 20 was or wasn't visible to different defendants or  
 21 different categories at the time, but that is the  
 22 practical outworking of what is called the internalised  
 23 net settlement of this series of transactions that are  
 24 different in some respects in character from each other  
 25 but in material respects net out cash movement and

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1 securities movement obligations to net zero.  
 2 MR RABINOWITZ: We will look at that and come back to your  
 3 Lordship about that.  
 4 MR JUSTICE ANDREW BAKER: Thank you. But however that may  
 5 be, is it then at or about this point, the record date  
 6 plus 1 settlement or completion date, that the custodian  
 7 then generates the credit advice note?  
 8 MR RABINOWITZ: It is on the settlement date that it does  
 9 that, yes.  
 10 MR JUSTICE ANDREW BAKER: And that then — and I have in  
 11 mind in that respect, for example, particularly how  
 12 I think the Lindsfarne written opening has described  
 13 it — it will potentially be said — and again, it may  
 14 be — it may be, so far as it goes, uncontentiously said  
 15 to be a record that is generated because and so as to  
 16 reflect one particular one of these various book-keeping  
 17 internalised net settlement entries, namely the one that  
 18 operates by reference to the net dividend amount and  
 19 a sense in which it is being credited to the buyer, that  
 20 book-keeping entry is what triggers the custodian to say  
 21 here is an advice of a credit entry that has been made  
 22 in one of your accounts with us, and we then get into  
 23 the debate in due course as to what that does or does  
 24 not convey either to the addressee of that credit advice  
 25 note, namely the buyer, or SKAT, when received by SKAT

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1 in conjunction with a reclaim form.  
 2 MR RABINOWITZ: Indeed.  
 3 MR JUSTICE ANDREW BAKER: Yes, thank you.  
 4 MR RABINOWITZ: So just going on with the trade, as it were.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: I think we haven't yet covered the unwind of  
 7 the stock loans. That does need to be done because  
 8 otherwise the short seller is left with an obligation to  
 9 return shares that it doesn't own and the buyer is left  
 10 with an obligation to return cash collateral that it  
 11 doesn't have. So, as pre-planned, this then leads to an  
 12 unwinding of all the trades in the first three steps to  
 13 return the participants to their original positions, and  
 14 that is what occurs by way of the fourth step, as we  
 15 explain at paragraph 90.5 of our written submissions,  
 16 and as we show in the bottom diagram, which your  
 17 Lordship now sees on the screen, the unwind of the WHT  
 18 applications by acquisition of the shares.  
 19 As your Lordship sees, the trades were unwound some  
 20 time later by entering into reverse trades with a buyer  
 21 selling the same quantity of shares to the broker, who  
 22 sells the same quantity of shares to the original short  
 23 seller.  
 24 MR JUSTICE ANDREW BAKER: Yes.  
 25 MR RABINOWITZ: And the futures being sold by the short

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1 seller to the broker, who then sells to the buyer, and  
 2 with the stock loans being recalled so that the original  
 3 short seller is required to return the shares and the  
 4 original buyer is required to return the cash collateral  
 5 so that, as I say, the positions have closed out again  
 6 without any need for any physical transfer of shares or  
 7 cash at all.  
 8 MR JUSTICE ANDREW BAKER: Yes. And at that point, going  
 9 back to one of the questions I asked earlier about the  
 10 initial stage of the model, at that point what had been  
 11 put on as a matched pair of futures in this version of  
 12 the model in later iterations matched pairs of  
 13 over—the-counter forwards. They come in, in the sense  
 14 that — they come into play and have a meaningful effect  
 15 to the overall scheme with a lower case "s" in the sense  
 16 that this unwinding on the equity trade or reverse equal  
 17 and opposite equity trade will be priced by reference to  
 18 real world market data at the date when the unwind is  
 19 done, but, of course, that is, all things being equal,  
 20 going to be different to the pricing you did at the  
 21 start, but you have hedged that, so it doesn't generate  
 22 anybody making a share price—related profit or loss that  
 23 would need to be funded.  
 24 MR RABINOWITZ: And that may be the purpose of the futures,  
 25 as I think your Lordship identified.

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1 MR JUSTICE ANDREW BAKER: So that is, therefore, ultimately  
 2 a part of everything, in the fullest sense, netting out  
 3 to a nil sum game other than the question of whether it  
 4 is or is not effective to cause SKAT to make a payment  
 5 out.  
 6 MR RABINOWITZ: Exactly that.  
 7 MR JUSTICE ANDREW BAKER: Thank you.  
 8 MR RABINOWITZ: So, my Lord, that's how we worked through  
 9 the paragraph 90.  
 10 MR JUSTICE ANDREW BAKER: Yes, thank you very much.  
 11 MR RABINOWITZ: What I was going to do next, and again this  
 12 may simply reflect what your Lordship has just seen, but  
 13 we are going to take your Lordship through an example of  
 14 2012–2013 trade, just to put some flesh on the bones of  
 15 how this worked.  
 16 MR JUSTICE ANDREW BAKER: Thank you.  
 17 MR RABINOWITZ: Can we for that purpose please go to  
 18 {C/271.2/1}. Can we open that, please. Thank you. So  
 19 just to identify what this is, it is a sample trades  
 20 list which was attached to your Lordship's order of  
 21 the — following the June 2023 CMC.  
 22 MR JUSTICE ANDREW BAKER: Yes.  
 23 MR RABINOWITZ: I'm not inviting you to go there. It is at  
 24 {C/271/1}. The Solo 2012–2013 sample trades are Solo 1,  
 25 2, 3 and 9. I'm going to take your Lordship through

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1 Solo 3, which is the example used in the Solo trade  
 2 summary, and Solo 3 is the trade that your Lordship will  
 3 find in row 4, so it is the AOI Pension Plan trade.  
 4 MR JUSTICE ANDREW BAKER: Yes.  
 5 MR RABINOWITZ: Your Lordship can see, if you look at column  
 6 I, that that is identified as Solo 4.  
 7 MR JUSTICE ANDREW BAKER: Yes.  
 8 MR RABINOWITZ: If your Lordship then looks at column B,  
 9 your Lordship sees the name AOI and that again — we saw  
 10 when we went through paragraph 90 — is the WHT  
 11 applicant, the equity buyer and the futures trade in the  
 12 diagram that we looked at.  
 13 MR JUSTICE ANDREW BAKER: Yes.  
 14 MR RABINOWITZ: AOI, the WHT applicant here, was what we  
 15 have called one of the original Argre plans, represented  
 16 by Mr Adam LaRosa, and I will come back and say a little  
 17 bit more about that later.  
 18 MR JUSTICE ANDREW BAKER: Just for our transcript, that is  
 19 A—r—g—r—e.  
 20 MR RABINOWITZ: A—r—g—r—e, correct. And Adam LaRosa,  
 21 L—a—R—o—s—a.  
 22 If we then go to column L, going along to the right,  
 23 the seller column, that is to say the short seller, your  
 24 Lordship sees that for this trade, looking in row 4,  
 25 that was Rock Capital. It has been highlighted by the

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1 EPE operator, which is helpful. And that was a company  
 2 owned by Mr Koerner, one of the defendants.  
 3 If your Lordship then goes on to look next at column  
 4 M, it is the equity broker column. Down to row 4, your  
 5 Lordship sees the equity broker was Novus, which your  
 6 Lordship can see from column Q was also the futures  
 7 broker for this trade, again in row 4, thank you, and  
 8 that, my Lord may recall, was a company majority owned  
 9 by Mr Murphy, another of the defendants.  
 10 If we then go to column O, one has the stock loan  
 11 entity.  
 12 MR JUSTICE ANDREW BAKER: Yes.  
 13 MR RABINOWITZ: And your Lordship sees row 4, that was  
 14 Colbrook. That is a Martin Smith company, and those  
 15 were the trading examples in the Solo 3 sample trade.  
 16 For the sake of completeness, your Lordship may wish to  
 17 note, just looking at column H, that the custodian here  
 18 is SCP, if we can go back to column H.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: And your Lordship may also wish just to  
 21 glance at column C, which identifies the Danish share in  
 22 question. Your Lordship saw this when we looked at some  
 23 of the underlying book entries, TDC.  
 24 MR JUSTICE ANDREW BAKER: Yes.  
 25 MR RABINOWITZ: And in column E, that identifies the amount

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1 of shares traded here, in row 4: 4.5 million. Your  
 2 Lordship sees that.  
 3 If we can then please go to the sample trade summary  
 4 itself —  
 5 MR JUSTICE ANDREW BAKER: Just before we do that — my  
 6 curiosity having been piqued — if we go to the right,  
 7 so later column numbers — column letters, I should  
 8 say — when we then get into S, T, U, V, is that then on  
 9 the unwind?  
 10 MR RABINOWITZ: Yes, that is on the unwind.  
 11 MR JUSTICE ANDREW BAKER: All right, thank you, yes.  
 12 MR RABINOWITZ: Can we then — I don't think — we may come  
 13 back to this, but can we go to {A/95/4}, sample trade  
 14 summary.  
 15 MR JUSTICE ANDREW BAKER: Thank you.  
 16 MR RABINOWITZ: And your Lordship sees just looking at B1.ii  
 17 just above paragraph 8, it is addressed to Solo 3, Solo  
 18 3 example, and your Lordship also sees that the key  
 19 dates relevant to the —  
 20 MR JUSTICE ANDREW BAKER: I think one page on, please.  
 21 {A/95/5}. There we are, yes. Thank you.  
 22 MR RABINOWITZ: Your Lordship sees the key dates relevant to  
 23 the dividend are set in italics immediately before the  
 24 text. Your Lordship sees that. So on 7 August, that is  
 25 the declaration date, Rock Capital agreed to sell

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1 4.5 million TD shares to Novus as broker.  
 2 Can we look at paragraph 8.1, please. Sorry, my  
 3 fault {A/95/4}.  
 4 MR JUSTICE ANDREW BAKER: There we are. Thank you.  
 5 MR RABINOWITZ: 7 August 2013, declaration date, Rock  
 6 Capital agreed to sell 4.5 million TD shares to Novus as  
 7 broker at a price of 47.385 Danish krone. Settlement  
 8 date 13 August. That is the payment date and Novus then  
 9 enters into — can we just scroll down, please, thank  
 10 you {A/95/5}.  
 11 Novus then entered into a back-to-back agreement to  
 12 sell the same number of shares at the same price or the  
 13 same settlement date as AOI. Your Lordship sees that.  
 14 Then at paragraph 8.2 your Lordship sees the  
 15 reference to the futures trade aspect of the  
 16 transaction. So on the settlement date — sorry, so  
 17 also on the declaration date AOI agreed to sell to Novus  
 18 as broker 45,000 flexible futures in 100k lots in  
 19 respect of TDC shares — your Lordship sees the price —  
 20 with an expiry of date of 21 March 2014.  
 21 Novus as broker enters into a back-to-back agreement  
 22 to sell to Rock Capital the same quantity of futures at  
 23 the same price with the same expiry date, and then your  
 24 Lordship sees the sample trade summary. It gives your  
 25 Lordship references to the emails from SCP approving the

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1 trade. I'm going to take your Lordship to those emails,  
 2 but just if I can first show your Lordship the  
 3 underlying trading emails between the counterparties  
 4 themselves.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: Can we first go to {MTKC9/102/1}. If we  
 7 open that on the left-hand side of the screen, if that  
 8 is possible {MTKC9/102/1}. Thank you. If we can open  
 9 on the right-hand side of {MTKC9/101/1}.  
 10 So just looking at the left-hand side, page 1, as  
 11 your Lordship sees from the top, this is an email from  
 12 Mr Adam LaRosa of AOI, 7 August 2011, emailing Novus at  
 13 11.03 to seek liquidity for AOI in respect of sample  
 14 trade Solo 3, which we have looked at, and identifying  
 15 for the buy transaction the specific equity trade on the  
 16 specific terms your Lordship has seen in outline  
 17 including, as your Lordship will note, a price to four  
 18 decimal points.  
 19 If we can, still on the left-hand side, go to  
 20 page {MTKC9/102/2}. Thank you. At the top — are we in  
 21 page 2? On the left-hand side your Lordship sees at the  
 22 top an email at precisely the same time on the same day,  
 23 again from Mr LaRosa, here sending another email to  
 24 Novus seeking liquidity for the specific futures trade  
 25 at the specific price, here in respect of a sale of

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1 futures transactions.  
 2 If we can then go still in the same document to  
 3 page {MTKC9/102/4}. Thank you. And your Lordship sees  
 4 here an email from Mr Murphy on behalf of Novus at 11.17  
 5 on the same day, responding to Mr LaRosa in respect of  
 6 the equity trades request for liquidity:  
 7 "Many thanks for the below request. Will seek  
 8 liquidity and get back to you."  
 9 And your Lordship can see that this relates to the  
 10 equity trades because if your Lordship —  
 11 MR JUSTICE ANDREW BAKER: Yes.  
 12 MR RABINOWITZ: — sees the email below. Your Lordship sees  
 13 that.  
 14 MR JUSTICE ANDREW BAKER: That is the one, it is buy cash  
 15 equities, and they are the purchase price rather than  
 16 the futures price, yes.  
 17 MR RABINOWITZ: If we can go, then, back to page  
 18 {MTKC9/102/3}, your Lordship sees at the top of the page  
 19 that Mr Murphy sends an identical email at the same time  
 20 in respect of the futures trade requests, and you can  
 21 see how this relates to the future trade again because  
 22 if your Lordship looks below that your Lordship sees the  
 23 trade to which this is responding, "sell futures".  
 24 Then in relation to the document on the right-hand  
 25 side of the screen, can we go to page {MTKC9/101/2} of

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1 that, please. Your Lordship sees on page 2 of that  
 2 document Mr Murphy sends an email on 7 August 2013 at  
 3 11.28, so that is within 11 minutes, and he asks — it  
 4 is addressed to sp@novus, which is a Novus email  
 5 address. Mr Murphy asks:  
 6 " ... on behalf of our client ..."  
 7 For liquidity in respect of the TDC futures with  
 8 expiry 21 March 2014, which is what Mr LaRosa wanted.  
 9 If we then go then to page {MTKC9/101/1}, so back  
 10 a page, and your Lordship sees there an email from  
 11 Mr Murphy on 7 August at 11.33, so that is five minutes  
 12 later. He asks for liquidity "on behalf of our client"  
 13 in respect of the TDC shares, the settlement on  
 14 13 August, so that is the payment date which again is  
 15 what Mr LaRosa wanted.  
 16 If we can go to page {MTKC9/101/3} of that, your  
 17 Lordship sees an email from, top of the page, Mr — from  
 18 Rock Capital, signed by Mr Alex, that is Mr Koerner:  
 19 "long time no speak. I will check my availability  
 20 how many shares I can sell."  
 21 The time appears to be 12.36, but he is in Germany;  
 22 I think it is likely, therefore, it was 11.36.  
 23 MR JUSTICE ANDREW BAKER: Yes.  
 24 MR RABINOWITZ: If we can go then to page {MTKC9/101/4}, top  
 25 of the page, your Lordship sees a further message from

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1 Mr Koerner of Rock Capital at 12.50, or 11.50 UK:  
 2 "Got so far 16.0 Mio shares.  
 3 "Let me know how many you want."  
 4 If we can then go on to page {MTKC9/101/5}, top of  
 5 the page, Mr Burge of Novus replies at 12.59 UK time,  
 6 asking to buy various shapes of TDC shares at specific  
 7 prices, including 4.5 million shares at, as your  
 8 Lordship sees, DKK 47.3850, the specific price that  
 9 Mr LaRosa wanted.  
 10 And your Lordship sees also that Mr Burge adds:  
 11 "Please advise if this suits before seeking approval  
 12 from your clearer to trade."  
 13 If we then go to page {MTKC9/101/6}, over the page,  
 14 your Lordship sees Mr Koerner's response at 13.01 UK  
 15 time. He says:  
 16 "Will do thanks.  
 17 " ... could you please check markets oft if you can  
 18 find a hedge?"  
 19 And then if we go to page {MTKC9/101/7}, top of the  
 20 page, Mr Burge replies 13.08 UK time, so seven minutes  
 21 later, offering futures with expiry 21 March 2014 at a  
 22 price of 46.46 krone for 45,000 lots, which is what  
 23 Mr LaRosa wanted.  
 24 If we then go to page {MTKC9/101/8}, Mr Koerner, as  
 25 your Lordship sees, replies at 13.15 to accept the

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1 offer.  
 2 Then if we can go back to the document on the  
 3 left-hand side of the screen, so that is {MTKC9/102/1}.  
 4 On that if we can go to page {MTKC9/102/5}, top of the  
 5 page. Thank you. Your Lordship sees that at 13.16  
 6 Mr Burge of Novus confirms that Novus can execute the  
 7 equity trade, and he asks Mr LaRosa to seek approval  
 8 from his clearer "before we can trade".  
 9 If we then go over to page {MTKC9/102/6}, your  
 10 Lordship sees an identical email at exactly the same  
 11 time from Mr Burge in respect of the futures trade  
 12 request. And then if we go over to page {MTKC9/102/7},  
 13 your Lordship sees that Mr LaRosa replies at 13.22 in  
 14 respect of the equity trade to say he will seek approval  
 15 from the clearer "now".  
 16 Then on page {MTKC9/102/8}, if we can go to that, an  
 17 identical email from Mr LaRosa sent at 13.22, so  
 18 precisely the same time, this time in respect of the  
 19 futures trade.  
 20 Then to page {MTKC9/102/10}. Thank you. Top of the  
 21 page, there is an email from the GSS team at SCP, so  
 22 trader approvals, the same day at 13.31, sent to  
 23 Mr LaRosa for AOI and copied to Novus. This approves  
 24 the equity buy trade by AOI and says that Solo will  
 25 effect clearance.

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1 If we can go back a page to page {MTKC9/102/9}, your  
 2 Lordship sees an identical message from GSS, also  
 3 exactly the same time, 13.31, sent to Mr LaRosa at AOI,  
 4 copied to Novus, in respect of the future sale trade by  
 5 AOI.  
 6 If we can then go on to page {MTKC9/102/14}, your  
 7 Lordship sees there the equity trade confirmation from  
 8 Novus, and we can see the futures trade confirmation  
 9 from Novus if we go to page {MTKC9/102/13}. Thank you.  
 10 And if you look at the bottom line — not easy to read.  
 11 MR JUSTICE ANDREW BAKER: Bottom line of the numbers or the  
 12 small print at the very bottom?  
 13 MR RABINOWITZ: The small print at the very bottom, your  
 14 Lordship sees numbers of units — thank you. 45,000  
 15 units.  
 16 MR JUSTICE ANDREW BAKER: Yes.  
 17 MR RABINOWITZ: And that covers the 4.5 million shares. So  
 18 lot size 100 times 45,000 gives you that.  
 19 If I can ask your Lordship next to go back to the  
 20 document we have I think on the right-hand side —  
 21 MR JUSTICE ANDREW BAKER: Just pausing there, the futures  
 22 reference price is the equity trade price that is being  
 23 put on at the same time and then what you have  
 24 previously mentioned in, for example, your paragraph 90  
 25 summary, the 46.46 price is therefore the future strike

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1 price.  
 2 MR RABINOWITZ: Right.  
 3 MR JUSTICE ANDREW BAKER: Yes, thank you.  
 4 MR RABINOWITZ: If we can go back to the document we have on  
 5 the right—hand side of the screen, so that is  
 6 {MTKC9/101}, can we go, please, to  
 7 page {MTKC9/101/16} — it only has 14 pages? Just give  
 8 us one second. Okay, we don't need to look at that.  
 9 The point I was going to make, my Lord, effectively  
 10 further emails in relation to this in this series of  
 11 trades, on the face of it, these emails purport to  
 12 demonstrate arm's length trades between independent  
 13 counterparties in a properly sequenced order.  
 14 I will obviously have to come back to that to show  
 15 your Lordship the role that Mr Patterson admits to  
 16 having played in this, in telling the counterparties,  
 17 effectively choreographing exactly what was going to  
 18 happen, telling the counterparties who to trade with,  
 19 when and at what prices.  
 20 So it all looks pukka and arm's length and  
 21 independent; in fact, Mr Patterson behind the scenes was  
 22 basically saying to people this is what you do, this is  
 23 when you do it, this is who you do it with.  
 24 For the moment, can we just go back, please, to the  
 25 sample trade summary {A/95/5}, so we can just look at

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1 what is said at paragraph 8.3. Thank you. As your  
 2 Lordship sees, we explain here that on 12 August 2013,  
 3 that is the record date, AOI agree to lend 4.5 million  
 4 TDC shares to Colbrook, which in turn agreed to lend  
 5 4.5 million TD shares to Rock Capital, in both cases for  
 6 collateral of 47.385 krone per share, which was the same  
 7 price as under the equity trades, for settlement on  
 8 13 August 2013. That is the same date as under the  
 9 equity trades, the payment date.  
 10 Can I just show your Lordship the underlying trade  
 11 emails for this.  
 12 Can we go, please, to {MTTE/1917/1}. Thank you.  
 13 And if we can start with the email at the bottom of the  
 14 chain at page {MTTE/1917/3}, if we go to page 3 of that.  
 15 Thank you. And your Lordship sees this is recorded as  
 16 having been sent on 12 August 2013, so that's the record  
 17 date, from Alex Smith, who is Martin Smith's son and the  
 18 other director of Colbrook, to Mr LaRosa at AOI.  
 19 Mr Smith is copied into the email. The time stamp  
 20 is 4.51 am, but that is probably because it has been  
 21 received by Mr LaRosa in New York, in a different time  
 22 zone — I think he is in Dubai. As your Lordship sees,  
 23 Alex Smith asks whether AOI have any interest in lending  
 24 some TDC shares for VD — that is value date — or  
 25 settlement date of 13 August 2013.

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1 If we can then please, look still on page 3, at the  
 2 top email of the page. Mr LaRosa replies on 12 August  
 3 at 3.19 pm; again, we think that is Dubai. So 7.19 am  
 4 New York time he says:  
 5 "Yes, we do have interest ..."  
 6 And he attaches terms, and although I'm afraid we  
 7 don't have the attachment we can see what the terms are  
 8 from the SCP approval email which I will come to  
 9 shortly.  
 10 MR JUSTICE ANDREW BAKER: Just pausing there, that's because  
 11 Dubai is three hours ahead of us in the summer and four  
 12 hours ahead of us in the winter because they don't  
 13 change clocks, is that right?  
 14 MR RABINOWITZ: That's right. And I think at this stage it  
 15 is eight hours ahead —  
 16 MR JUSTICE ANDREW BAKER: At this stage, 4.51 New York,  
 17 bottom email, will have been — they do have daylight  
 18 saving, so that will have been 9.51 am here, and 3.19 pm  
 19 Dubai would be just after midday here and just after  
 20 7.00 in the morning in New York. Yes, fine. Thank you.  
 21 MR RABINOWITZ: If we just carry on with the email chain —  
 22 thank you, my Lord. If we go to page {MTTE/1917/2}, we  
 23 see that Mr Smith replies on 12 August, 7.22 am New York  
 24 time, so 3.22 Dubai time.  
 25 MR JUSTICE ANDREW BAKER: Yes.

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1 MR RABINOWITZ: Three minutes later. And he agrees the  
 2 terms. If your Lordship then looks at the email above  
 3 that, this is from Mr LaRosa, 7.29 New York time, saying  
 4 that approval will be sought, so that is seven minutes  
 5 later, approval will be sought from the clearer.  
 6 If we go then to the document we have at {R3/6/1},  
 7 please, top of the page. Thank you. We have an email  
 8 from SCP to Mr LaRosa at AOI, 12 August 2013. Your  
 9 Lordship sees the time stamp, 12.47 UTC, which is —  
 10 New York is four hours behind in the summer, that is  
 11 8.47 am New York time.  
 12 Unfortunately, my Lord, because of issues of  
 13 disclosure given by Mr Koerner and Mr Smith we don't  
 14 have the underlying trading emails between Colbrook and  
 15 Rock Capital in relation to the other half of the stock  
 16 loan. Mr Koerner has given no disclosure at all. But  
 17 what we do have are the related emails that involve the  
 18 team at SCP and individual trading companies and that  
 19 give us a sense of what is happening.  
 20 To that end, can we go to {MTKC9/197.1/1}. Thank  
 21 you. And this is, as your Lordship sees, an email from  
 22 SCP to Rock Capital on 12 August 2013, 12.45 pm UTC, and  
 23 your Lordship sees that it says SCP:  
 24 "... acknowledges receipt of the requested trade  
 25 ..."

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1 But notes that:  
 2 "The Trade will only be accepted for 'give-up' to  
 3 [SCP] once the Trade is approved by [SCP] ..."  
 4 And your Lordship sees it sets out the terms of the  
 5 stock loan with Colbrook described as the counterparty  
 6 at the bottom, including the quantity, which is  
 7 described as "Price" but in fact means the amount of  
 8 collateral. It gives the settlement date as well, all  
 9 of which, your Lordship may recall, mirror the equity  
 10 trade.  
 11 MR JUSTICE ANDREW BAKER: Yes.  
 12 MR RABINOWITZ: And as your Lordship sees from this SCP  
 13 approval email, there are also specific terms regarding  
 14 interest and stock loan fees.  
 15 The reference to cash rebate interest and spread  
 16 relates to the interest on the cash collateral, and the  
 17 reference to stock rebate interest and spread are the  
 18 stock lending fees.  
 19 We can go then, please, to {MTKC9/197.2/1}. As your  
 20 Lordship sees, this is an email from GSS to Rock on  
 21 12 August 2013 at 12.47 UTC, so two minutes after the  
 22 last email, and as your Lordship sees, this now approves  
 23 the stock loan with Colbrook on the same terms we just  
 24 saw.  
 25 If we can then go back to the sample trade summary

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1 at {A/95/5}, look at paragraph 9. As your Lordship  
 2 sees, we say here on 13 August 2013 SCP issued a credit  
 3 advice note, a CAN, in respect of this AOI trade.  
 4 MR JUSTICE ANDREW BAKER: Yes.  
 5 MR RABINOWITZ: I will take you to the credit advice note  
 6 shortly.  
 7 MR JUSTICE ANDREW BAKER: Yes. But reflecting one of the  
 8 earlier questions and answers in relation to that and,  
 9 as with all of those sorts of questions and answers,  
 10 subject always to the argument that will follow in due  
 11 course as to what this all amounted to, but simply in  
 12 terms of the factual record there will then have been  
 13 a credit entry item in the amounts shown there in the  
 14 underlying accounting records kept by SCP as, it says,  
 15 custodian that will have been, as it were, matched to  
 16 and the reason for the generation of that credit advice  
 17 note.  
 18 MR RABINOWITZ: Indeed.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: So, my Lord, that is all I was going to say  
 21 by way of introduction in terms of Solo trading  
 22 structure.  
 23 MR JUSTICE ANDREW BAKER: Thank you.  
 24 MR RABINOWITZ: And we will come back to your Lordship with  
 25 the book entries, if I may.

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1 MR JUSTICE ANDREW BAKER: Thank you.  
 2 MR RABINOWITZ: I was going to next move on, my Lord, to say  
 3 something about our case about the representations that  
 4 we say were made to SKAT.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: And the structure I was proposing to follow  
 7 in this part of the opening is first to show your  
 8 Lordship the key part of SKAT's pleaded case on the  
 9 representations; secondly, to identify for your Lordship  
 10 the context on which the applications were made; third,  
 11 to take your Lordship through the key documents which we  
 12 say contained the representations; and, fourth, to say  
 13 something very briefly about reliance.  
 14 MR JUSTICE ANDREW BAKER: Thank you.  
 15 MR RABINOWITZ: So can we please begin with the particulars  
 16 of claim which your Lordship will find at {B/5.1/1}.  
 17 Now, all the pleadings on misrepresentation are,  
 18 obviously, in the particulars of claim. Your Lordship  
 19 will recall that following your Lordship's validity  
 20 issues judgment we received a request for further  
 21 information from the DWF defendants asking for clarity  
 22 about our case in the light of your Lordship's  
 23 conclusions and, this being so, it may be helpful in  
 24 seeking to understand SKAT's misrepresentation case to  
 25 look at both documents. So perhaps we can have the

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1 other document, the RFI, on the right-hand side of the  
 2 screen, if we can. We can keep the document that you  
 3 have there on the left and we can bring up the document  
 4 which we have at {B/117.16/1}. Thank you very much.  
 5 Starting with the document you have on the left-hand  
 6 side, can we go to page {B/5.1/8}, please, of the  
 7 particulars of claim. Thank you. We are going to look  
 8 under the heading "Dividend WHT Regime".  
 9 MR JUSTICE ANDREW BAKER: Yes.  
 10 MR RABINOWITZ: Your Lordship will be familiar with this.  
 11 We set out the Danish tax law context for a WHT  
 12 application and in paragraphs 6 to 9 we summarise the  
 13 basics of the WHT regime, withholding tax regime.  
 14 Perhaps I can ask your Lordship to read, perhaps, 6 to 9  
 15 to yourself.  
 16 MR JUSTICE ANDREW BAKER: Yes. (Pause).  
 17 MR RABINOWITZ: We are going to have to flip the pages when  
 18 your Lordship gets to ---  
 19 MR JUSTICE ANDREW BAKER: Yes, if we go over the page,  
 20 please. Thank you. {B/5.1/9}.  
 21 Yes, if we can get the bottom of that page up. Yes,  
 22 and then over the page {B/5.1/10}. Yes, thank you.  
 23 MR RABINOWITZ: Thank you. So just summarising what your  
 24 Lordship has seen, we plead, paragraph 7 {B/5.1/8}, that  
 25 Danish companies are obliged to withhold tax and

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1 dividends declared and only to pay to shareholders the  
2 dividend net of withholding tax at a rate of 27%.

3 At paragraph 8 {B/5.1/9}, as your Lordship saw,  
4 include that a shareholder who has been taxed on  
5 dividends received may apply for a refund on any part of  
6 the tax that was not in fact due.

7 In paragraph 9 we explain that the US and the  
8 Malaysian double tax treaty with Denmark provided that  
9 qualifying US and Malaysian entities were to be exempt  
10 from any taxation, whilst UK or Luxembourg entities were  
11 only to be taxed at a rate of 15%.

12 Then, my Lord, just staying with this document, if  
13 we can look at paragraph 10 {B/5.1/10}, your Lordship  
14 sees we explain that a shareholder in a Danish company  
15 that seeks a refund had to complete a tax relief form,  
16 and we there set out the materials required by that  
17 form. Your Lordship is familiar with that.

18 MR JUSTICE ANDREW BAKER: Yes.

19 MR RABINOWITZ: And then if we can look at paragraph —  
20 sorry, if we can go to page {B/5.1/11} of that pleading.  
21 My Lord sees, not least from the heading above,  
22 paragraph 13, this section is dealing with the WHT  
23 applications. If we can go, please, it is on this page,  
24 paragraph 17, this describes for your Lordship the  
25 documents that were contained with each WHT application.

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1 Can I just invite your Lordship to look at that  
2 paragraph, please.

3 MR JUSTICE ANDREW BAKER: Yes.

4 MR RABINOWITZ: We will come on in due course and show your  
5 Lordship those documents.

6 MR JUSTICE ANDREW BAKER: Yes. Thank you.

7 MR RABINOWITZ: Just pausing there, just staying there, your  
8 Lordship sees the reference in paragraph 17(c) to shares  
9 held and we accept, as I think we must, that that has  
10 caused some confusion due to infelicitous drafting on  
11 our part, the use of the word "held", and I ought to  
12 just clarify our position.

13 I can come back to this in more detail if necessary,  
14 but just to make clear, we say the representations about  
15 shareholding in the applications concerned ownership of  
16 Danish shares, not a positive settled balance of shares  
17 at a particular point in time.

18 But, my Lord, the latter concept, positive share,  
19 settled balance or not, at a particular point in time  
20 is, of course, highly relevant to the issue of falsity  
21 which — of the representations which your Lordship  
22 considered in the validity judgment, and that we say is  
23 because as the custodians never held any positive  
24 settled balance of Danish shares for their clients,  
25 which was registered directly or indirectly through

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1 a subcustodian with VP Securities, because they didn't  
2 hold those shares it was impossible for the applicants  
3 to own any shares, receive any dividends or suffer any  
4 taxation.

5 Just looking next, if we can, at paragraph 19 of the  
6 particulars of claim on page {B/5.1/13}, as your  
7 Lordship sees, we say there what we say the four key  
8 representations were that were made in the application  
9 as a whole. Can I just ask your Lordship to remind  
10 yourself of what we say they were?

11 MR JUSTICE ANDREW BAKER: Yes, thank you.

12 MR RABINOWITZ: If we can then look at the RFI response on  
13 the right — hand side of the screen, and if we can go in  
14 that to page {B/117.16/8}. Thank you. At the bottom of  
15 the page your Lordship sees response 3, and this seeks  
16 to clarify what is meant in relation to the first  
17 alleged representation we identify by the reference to  
18 share ownership, and your Lordship sees we say here  
19 that:

20 "The WHT Applications represented that, at the time  
21 of the dividend declaration by the ... Danish company,  
22 the WHT Applicants were the owners of the shares  
23 specified in the relevant [CANs] as a matter of Danish  
24 tax law."

25 And then we say, if we can just probably go over the

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1 page {B/117.16/9}:

2 "The requirements for ownership under Danish tax law  
3 are set out in the Validity Issues Judgment."

4 We go on to make reference to a positive settled  
5 balance of shares. As I have already noted, my Lord,  
6 I accept that this is a concept more accurately relevant  
7 to falsity, not to the terms of the representation  
8 itself, and I would invite your Lordship effectively to  
9 ignore it in the context of looking at the  
10 representation itself.

11 Still with the RFI response, if we can go on to  
12 page {B/117.16/9}, please, and we are on that, looking  
13 at response 4, as my Lord sees that is seeking to  
14 identify, give further information, as to what is  
15 alleged in the reference in the context of the second  
16 representation we advance, what we mean by the receipt  
17 of a dividend.

18 Can I just invite your Lordship to go, please, to  
19 page {B/117.16/10}, to read what we say in the main body  
20 of paragraph 4 and also paragraph 4.1.

21 MR JUSTICE ANDREW BAKER: Yes.

22 MR RABINOWITZ: Thank you. We can then go on to

23 page {B/117.16/11}, where we have the substance —

24 MR JUSTICE ANDREW BAKER: Not now, because it does get into  
25 the argument, but at the thick end of a year from now

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1 when we are looking at closing argument there will be  
 2 a need, it seems to me, to explore a little carefully  
 3 that additional reference to what is said about payments  
 4 being received, because as I apprehend a consequence of  
 5 the validity issues judgment is that at least stated now  
 6 in the abstract and with the benefit of that judgment,  
 7 taking onboard points the defendants wish to make about  
 8 that as context, but as we would now see things you  
 9 could be somebody that never received any such payment  
 10 but yet had been the party entitled to the shareholding  
 11 in the relevant sense at the relevant time who had  
 12 suffered the withholding of tax. Conversely, you could  
 13 be somebody that did, because you were the record date  
 14 shareholder, in the terminology I used, receive  
 15 a payment of that description and yet not be the person,  
 16 strictly speaking, who was the person materially liable  
 17 to tax.  
 18 MR RABINOWITZ: Your Lordship is right. But, obviously, as  
 19 we say in paragraph 4.1, in the ordinary course — I'm  
 20 not saying — I have effectively accepted your  
 21 Lordship's point, that theoretically they could be  
 22 different people.  
 23 MR JUSTICE ANDREW BAKER: Yes.  
 24 MR RABINOWITZ: But in the ordinary course, if you have  
 25 someone who has received a dividend — sorry, has

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1 received payment, that might be regarded as confirmation  
 2 that they had received the dividend in the sense that  
 3 your Lordship identifies while being the person entitled  
 4 to the dividend at the relevant date. But your Lordship  
 5 is right, we will have to come back to that.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: I was just going to invite your Lordship to  
 8 go on to page {B/117.16/11}. Have we looked at response  
 9 5 on page 11.  
 10 MR JUSTICE ANDREW BAKER: Yes.  
 11 MR RABINOWITZ: The response to that — so your Lordship  
 12 sees the response. We may need to go over the page.  
 13 {B/117.16/12}.  
 14 MR JUSTICE ANDREW BAKER: Thank you.  
 15 MR RABINOWITZ: If I can then ask your Lordship to go back  
 16 to the particulars of claim which you have on the  
 17 left — hand side of the screen. Can we just look at  
 18 paragraph 21 on page {B/5.1/13}. You have that open.  
 19 And this sets out the representations we say were  
 20 specifically made in the CANs themselves, and again can  
 21 I invite your Lordship just to look at what we say about  
 22 that, and that is — your Lordship is obviously going to  
 23 have to go over the page to see that.  
 24 MR JUSTICE ANDREW BAKER: Yes.  
 25 MR RABINOWITZ: Thank you. {B/5.1/14}.

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1 MR JUSTICE ANDREW BAKER: Just for the [draft] transcript,  
 2 what you have said has come out as "plans", but I think  
 3 what you said was CANs, C—A—N—s.  
 4 MR RABINOWITZ: Thank you.  
 5 MR JUSTICE ANDREW BAKER: Thank you. Yes.  
 6 MR RABINOWITZ: So that is the pleading and we can leave  
 7 those for the moment. Can I then just say something  
 8 further about the context in which we say the  
 9 representations were made, and the first point to make  
 10 in this regard, my Lord, as we note in paragraph 218 of  
 11 the main skeleton, and this is pretty straightforward,  
 12 it is always necessary in construing statements, and  
 13 indeed the impact they might be expected to have on  
 14 a reasonable representee, with the known characteristics  
 15 of the actual representee, to have regard to the context  
 16 in which those representations or misstatements were  
 17 made.  
 18 That is a proposition which appears to be accepted  
 19 by certainly the DWF defendants and the SS defendants as  
 20 well, and for your Lordship's note that is clear from  
 21 the DWF submissions at paragraph 44.1. We don't need to  
 22 turn that up, and from the SS defendants' submissions at  
 23 paragraph 85, and again we don't need to turn that up.  
 24 My Lord, there is also agreement, at least with the  
 25 DWF defendants, when they say — and again we don't need

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1 to turn this up, this is at paragraph 460 to 461 of  
 2 their submissions — that in the present case the  
 3 relevant context was that an application was being made  
 4 to the Danish tax authority SKAT for tax relief in  
 5 respect of a tax imposed on a dividend payment.  
 6 In other words, in seeking to understand objectively  
 7 what statements are made, we submit that it is plainly  
 8 important to have in mind that the statements were made  
 9 in connection with an application in the context of  
 10 a system for refunding amounts of dividend tax that had  
 11 been withheld by a Danish company that had distributed  
 12 a dividend to its shareholders.  
 13 Logically, therefore, we say that the documentation  
 14 submitted as part of such an application would  
 15 objectively be understood to have as its aim to  
 16 demonstrate, or at least seek to demonstrate, that the  
 17 conditions for a valid WHT refund application under  
 18 Danish tax law had in fact been met by the applicant,  
 19 otherwise it would be difficult to know why this form  
 20 was being put in.  
 21 Because, of course, my Lord, the Danish tax  
 22 authority would have no interest in or responsibility  
 23 for paying refunds of tax to persons who had never  
 24 suffered any tax imposed in the first place from which  
 25 to seek relief, or which were not in fact entitled to

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1 any such refund as a matter of Danish tax law.  
 2 So that we say is the relevant context in which the  
 3 question of what representations were made should be  
 4 approached.  
 5 Can I turn next, my Lord, just to look at some of  
 6 the documents making up the applications and the express  
 7 statements they contained.  
 8 MR JUSTICE ANDREW BAKER: But does that mean that the  
 9 question of, as it were, tax context in which one has to  
 10 construe the purport of any content of that claim  
 11 documentation to work out what, if any, representations  
 12 of fact it makes is particular to the tax reclaim  
 13 situation and is different to, for example, the putting  
 14 in of a tax return on the other hand? Because if  
 15 I submit my tax return to HMRC and as well as making  
 16 declarations that I will do in that that I think I am  
 17 putting in what I believe to be accurate information  
 18 about monies I have received which are likely to be  
 19 taxable, I also put in information in various boxes that  
 20 are to do with things that are by nature deductions or  
 21 reliefs or entitlements that will go to reduce my tax  
 22 bill.  
 23 At one level, functionally, I am actually doing  
 24 something in that latter respect that is equivalent to  
 25 this: I'm saying I'm a taxpayer and I'm saying that

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1 I potentially owe less tax than I might otherwise owe  
 2 because of these elements. I'm not sure I find it  
 3 a natural way of describing what I do when I return my  
 4 tax return as providing, as you just put it, an attempt  
 5 to demonstrate that I satisfy conditions.  
 6 MR RABINOWITZ: It may be that it is different —  
 7 MR JUSTICE ANDREW BAKER: I'm providing —  
 8 MR RABINOWITZ: — because you're obliged —  
 9 MR JUSTICE ANDREW BAKER: It has to be an honest return, but  
 10 I'm providing what is an honest return of what I believe  
 11 is the information the tax man will need to assess how  
 12 much tax he should charge me.  
 13 MR RABINOWITZ: Your Lordship started that question by  
 14 asking whether I thought it was the same as.  
 15 MR JUSTICE ANDREW BAKER: Yes.  
 16 MR RABINOWITZ: And in my respectful submission perhaps your  
 17 Lordship has answered that question: not for that  
 18 reason.  
 19 MR JUSTICE ANDREW BAKER: Perhaps for that reason it is not  
 20 really quite the same.  
 21 MR RABINOWITZ: And it may be the reason that it is  
 22 different is that when you put in the tax return it is  
 23 because you have to put in the tax return. You have to  
 24 provide this information. You obviously don't have to  
 25 claim set-offs, but you certainly have to put in — you

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1 have to tell HMRC something and that is why you are  
 2 providing the information. I'm not sure that beyond  
 3 that one is — it really helps shall — I don't know  
 4 whether one is right to be characterising that — that  
 5 as the context. Here, it is rather different, because  
 6 here you don't have to do anything, but you are doing  
 7 something in order to obtain actually a refund. That is  
 8 what the heading is.  
 9 MR JUSTICE ANDREW BAKER: Yes, and although I, of course,  
 10 appreciate that to the extent it was an influence on me  
 11 when we were on analysing the Revenue Rule, the relevant  
 12 analysis I was wrong to think led to the conclusion that  
 13 the Revenue Rule applied, but would you say that  
 14 factually speaking it is nonetheless still true as an  
 15 element of what is happening that the WHT applicant in  
 16 whose name the tax reclaim is put forward is, as you  
 17 have just said, without any obligation to do so if it  
 18 chooses not to do so, but it is choosing to go to SKAT,  
 19 in effect saying I have become one of your taxpayers but  
 20 I have become one of your taxpayers in circumstances  
 21 where either I shouldn't have been at all or I should  
 22 have only have been to the tune of 15% or 10% and I want  
 23 the excess.  
 24 MR RABINOWITZ: We very much say that, my Lord. In our  
 25 respectful submission, that is absolutely the context in

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1 which —  
 2 MR JUSTICE ANDREW BAKER: That you would say still  
 3 constitutes an element of context and evident purpose of  
 4 document in the light of which one has to look at how  
 5 much it is in the document amounts to a statement of  
 6 fact at all and that which amounts to statements of  
 7 fact, what is it purporting to convey.  
 8 MR RABINOWITZ: Precisely. Because the tax context — leave  
 9 aside the tax issue, but there can be no doubt when you  
 10 look at these forms headed "tax reclaim", referencing  
 11 a number of occasions, tax reclaim, tax refund, they are  
 12 purporting to be people on whom a tax has been imposed  
 13 when it shouldn't have been, as your Lordship says,  
 14 either to the full extent or not at all.  
 15 And this is — in other words, the statements which  
 16 are made are not made without that context. It matters  
 17 that it is that context —  
 18 MR JUSTICE ANDREW BAKER: Yes.  
 19 MR RABINOWITZ: — when you try and understand what it is  
 20 objectively that they are representing.  
 21 MR JUSTICE ANDREW BAKER: Thank you.  
 22 MR RABINOWITZ: Can I then take your Lordship to some  
 23 documents. Can we start, again sticking with sample  
 24 trade Solo 3, just because we have gone thus far with it  
 25 we may as well stay with it, just to use that as the

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1 samples. If I can invite your Lordship to go first to  
 2 {R3/13/1}. Thank you. What your Lordship sees here is  
 3 the cover letter from Goal, that is the tax agent, to  
 4 SKAT, dated 28 August 2013.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: Can I just invite your Lordship to briefly  
 7 look at that, at what it says.  
 8 MR JUSTICE ANDREW BAKER: Yes, thank you.  
 9 MR RABINOWITZ: So your Lordship sees Goal says that it is  
 10 enclosing a tax reclaim form on behalf of its client,  
 11 AOI Pension Plan:  
 12 "... together with evidence of payment and tax  
 13 deduction paid on the above client's securities."  
 14 And we obviously rely on those words in support of  
 15 our case that the WHT application represented that there  
 16 had been a withholding or deduction of tax from  
 17 a payment received by AOI in respect of a Danish  
 18 security owned by AOI.  
 19 If we go next, please, to page {R3/13/2} of the same  
 20 document. Your Lordship sees the tax refund form and  
 21 again your Lordship sees this is filed by Goal on behalf  
 22 of AOI. Your Lordship sees "Claim", just at the top, on  
 23 behalf of the beneficial owner. There is a tick there.  
 24 MR JUSTICE ANDREW BAKER: Yes.  
 25 MR RABINOWITZ: And after saying that it is filed on behalf

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1 of the beneficial owner it then says, as your Lordship  
 2 sees, that it is a:  
 3 "Claim is made for refund of Danish dividend tax."  
 4 And your Lordship sees the total given. Now, again,  
 5 as your Lordship knows, we say that those words  
 6 expressly or impliedly represented that the applicant,  
 7 AOI, had suffered a withholding of tax on dividends  
 8 received from a Danish company, because we say that  
 9 applying for a refund of Danish dividend tax on the  
 10 basis of a form dealing with claims to relief from  
 11 taxation necessarily presupposes that Danish dividend  
 12 tax or an amount in respect thereof has been withheld  
 13 from or been imposed upon a dividend received by an  
 14 applicant, here AOI, who has some basis for and is  
 15 seeking the refund of that dividend tax.  
 16 Unless AOI had suffered such a withholding of tax on  
 17 dividends received, there was nothing in respect of  
 18 which it could apply for a refund. Of course, my Lord,  
 19 SKAT could not refund money that had not been paid to it  
 20 in the first place.  
 21 MR JUSTICE ANDREW BAKER: Yes.  
 22 MR RABINOWITZ: We say, further, that this is reinforced by  
 23 the fact that the tax refund form, as your Lordship  
 24 sees, looking just underneath Goal's signature, then  
 25 notes that:

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1 "... documentation is enclosed dividend advice(s),  
 2 number 1."  
 3 I don't know whether we can see that, actually.  
 4 Right at the bottom.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: There you go, yes, just above the "Financial  
 7 institution" line.  
 8 And your Lordship sees also there is a warning on  
 9 the form itself:  
 10 "(This documentation is obligatory)."  
 11 So the dividend advice is obligatory; again, we say  
 12 that emphasises the importance to the WHT application  
 13 that there is this dividend advice.  
 14 MR JUSTICE ANDREW BAKER: Because both the smaller standard  
 15 font text saying as documentation is enclosed, ie  
 16 meaning there is enclosed dividend advice and a number,  
 17 and so on, and also the slightly larger italicised font  
 18 is all part of the standard form in blank, correct?  
 19 MR RABINOWITZ: Yes.  
 20 MR JUSTICE ANDREW BAKER: So in this example at this point  
 21 in the form what has been inputted by Goal in the  
 22 beneficial owner section is the name, address, the  
 23 email, the signature stamp of Goal and the number 1 for  
 24 the documentation enclosed, the number of credit advices  
 25 enclosed. Yes.

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1 MR RABINOWITZ: Exactly that. I think your Lordship said  
 2 and the Danish dividend tax right at the top.  
 3 MR JUSTICE ANDREW BAKER: And the amount just above that,  
 4 yes, thank you.  
 5 MR RABINOWITZ: So — and we rely on the fact — just the  
 6 references to the dividend advice, we rely on the fact  
 7 that the form refers to that, which I'm going to show  
 8 your Lordship, again as in a sense being the context in  
 9 which these representations are made; that is to say,  
 10 what is being reclaimed is a dividend —  
 11 MR JUSTICE ANDREW BAKER: Yes.  
 12 MR RABINOWITZ: — paid from which tax was withheld.  
 13 If we can then look — we can probably do this  
 14 before the break, subject to your Lordship — at  
 15 a dividend credit advice which accompanied this  
 16 particular application, which we can see at page  
 17 {R3/13/5}. Thank you. So your Lordship sees it is  
 18 issued by SCP, custodian, and it is issued in relation  
 19 to the AOI trade that we have been through, dated  
 20 13 August. And as your Lordship sees, it says:  
 21 "Please be advised that we have credited your  
 22 account ..."  
 23 That is AOI's account:  
 24 "... for the value date of 13th August 2013. This  
 25 payment represents the dividend as shown below."

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April 15, 2024

Skatteforvaltningen v Solo Capital Partners LLP &amp; Others

Day 1MT

1 Now, as your Lordship sees, the notice or the advice  
2 then goes on to set out details of the number of TD  
3 shares, 4.5 million. That can only sensibly refer to  
4 a shareholding by AOI of that amount of TDC shares. And  
5 then your Lordship sees the reference to a gross  
6 dividend, significantly also the net dividend, all of  
7 this again in the context of an application for a tax  
8 refund in respect of tax withheld, and indeed your  
9 Lordship sees that the amount of tax is set out as well.  
10 That would be the tax withheld.

11 And then, as your Lordship sees ---  
12 MR JUSTICE ANDREW BAKER: Other things being equal,  
13 I appreciate you will say, and it will be part of the  
14 argument that I will considering in due course, that one  
15 ends up potentially needing to take care as to what  
16 something conveys given the context. But other things  
17 being equal, the information in the block there against  
18 the various items is descriptive of a dividend that will  
19 undoubtedly have existed.

20 That is to say, there will have been a declared  
21 dividend of however many krone per share it was that  
22 that on a shareholding of 4.5 million would generate  
23 that much by way of gross dividend in respect of which  
24 there would, by operation of the basic withholding tax  
25 regime, have been, necessarily on the company's part,

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1 a deduction of that amount in tax resulting in a net  
2 dividend in amount of that.  
3 MR RABINOWITZ: Your Lordship is correct if you assume that  
4 there was in fact a shareholding held by this particular  
5 person.  
6 MR JUSTICE ANDREW BAKER: But why?  
7 MR RABINOWITZ: Because ---  
8 MR JUSTICE ANDREW BAKER: As a description of something that  
9 is real it might be said this doesn't in terms, as  
10 a document itself, say anything at all about who, if  
11 anyone, and in particular whether AOI, has been  
12 a shareholder at any stage.  
13 MR RABINOWITZ: No.  
14 MR JUSTICE ANDREW BAKER: Rather than that it has been  
15 credited with an amount in an account.  
16 MR RABINOWITZ: Which represents a dividend.  
17 MR JUSTICE ANDREW BAKER: Which per the custodian is treated  
18 as representing something.  
19 MR RABINOWITZ: And in respect of which tax has been  
20 withheld. That I think --- your Lordship is right,  
21 context is going to matter here.  
22 MR JUSTICE ANDREW BAKER: Obviously I am teasing that at  
23 even this incredibly early stage in a very long trial  
24 because I certainly have in mind that there is the  
25 capacity for context of credit advice note as issued by

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1 a custodian and what it does or does not state to the  
2 addressee of the credit advice note ---  
3 MR RABINOWITZ: Yes.  
4 MR JUSTICE ANDREW BAKER: --- which is not SKAT ---  
5 MR RABINOWITZ: No.  
6 MR JUSTICE ANDREW BAKER: --- is one thing and is one  
7 potential intellectual exercise. It may or may not be  
8 different whether as produced as part of a package with  
9 a descriptor in the form that says this is my evidence  
10 of something, the application package says, taken as  
11 a whole, something that may or may not be capable of  
12 being spelt out in the same way from the credit advice  
13 note on its own ---  
14 MR RABINOWITZ: I completely accept that.  
15 MR JUSTICE ANDREW BAKER: --- which may not matter in the  
16 case of some defendants. Given their relevant roles, it  
17 may matter more for some other defendants.  
18 MR RABINOWITZ: Your Lordship is right. There may be  
19 defendants who know absolutely nothing about the context  
20 and who see something like this without knowing anything  
21 about the context and think --- subject to one point  
22 which I will come to --- well, what is wrong with that,  
23 there is a custodian who is making these entries on my  
24 behalf. The tax point is slightly problematic even for  
25 those defendants if --- well, one doesn't know what else

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1 they know.  
2 MR JUSTICE ANDREW BAKER: Yes.  
3 MR RABINOWITZ: Very different question, as your Lordship  
4 puts to me as well, where you know the context in which  
5 this is being produced.  
6 MR JUSTICE ANDREW BAKER: Yes. Or may be. Yes, I see that.  
7 MR RABINOWITZ: So with respect, I largely go along with  
8 what your Lordship says other than the tax point, it  
9 seems to me, even for ---  
10 MR JUSTICE ANDREW BAKER: All right, thank you.  
11 MR RABINOWITZ: I wonder whether that is a convenient ...  
12 MR JUSTICE ANDREW BAKER: Oh yes, thank you. Yes. On the  
13 basis, as before, that if we all try and go on digital  
14 devices of some sort that have likely got the same and  
15 an accurate time and not the clock on the wall that is  
16 running a bit fast, we will try to resume at 2 o'clock.  
17 Thank you very much.  
18 (1.02 pm)  
19 (The short adjournment)  
20 (2.00 pm)  
21 MR JUSTICE ANDREW BAKER: Yes, Mr Rabinowitz. Thank you.  
22 MR RABINOWITZ: My Lord, I'm grateful.  
23 My Lord, I have shown you the three documents that  
24 form part of the WHT applications: cover letter, tax  
25 reform fund and the advice notice.

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1 MR JUSTICE ANDREW BAKER: Yes.  
 2 MR RABINOWITZ: Your Lordship obviously is aware that there  
 3 was more than one tax agent and more than custodian and  
 4 that there are other versions of the same type of  
 5 document. I wonder if I can just quickly show your  
 6 Lordship some of those. They are all in slightly  
 7 different language, slightly different formats.  
 8 MR JUSTICE ANDREW BAKER: Yes.  
 9 MR RABINOWITZ: But as your Lordship will see, they are all  
 10 riffs on the same tune, if we can put it that way.  
 11 If we go to look at some of the other tax agent  
 12 cover letters, if we first take an Acupay example  
 13 {R2/13/1}. Thank you. So this is the cover letter from  
 14 Acupay for sample trade Solo 2, and your Lordship sees  
 15 from the first paragraph this says that what is attached  
 16 is "a reclaim application to obtain a full refund of  
 17 Danish dividend tax". Again, we would suggest, implying  
 18 that some Danish dividend tax has in fact been paid to  
 19 SKAT which is to be refunded by SKAT.  
 20 If I can then show your Lordship examples of the Koi  
 21 and Syntax letters, they are the other tax agents, we  
 22 can see an example of Syntax if we go to {R8/19/1}.  
 23 Thank you very much. If your Lordship looks at the  
 24 first paragraph here, your Lordship sees the reference  
 25 to this being "a reclaim application" in the context of

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1 a double taxation treaty between the US and Denmark:  
 2 " ... for a complete refund of Danish Dividend Tax  
 3 that was previously withheld~..."  
 4 And then if we can look at the Koi letter,  
 5 {R19/13/1}. Thank you.  
 6 Again, as your Lordship sees, this again refers to  
 7 seeking:  
 8 " ... a complete refund of Danish Dividend Tax that  
 9 was previously withheld in relation to their  
 10 investments."  
 11 If I can then show your Lordship other credit advice  
 12 notices, and if I can just start with the other three  
 13 Solo custodians. If we can go first to an example of  
 14 a WPD CAN that is for sample trade Solo 15, we have that  
 15 at {R15/13/1}. So West Point.  
 16 MR JUSTICE ANDREW BAKER: Yes.  
 17 MR RABINOWITZ: And your Lordship sees the format is unique  
 18 to West Point but the information within it is familiar.  
 19 Again, in the context of giving advice about a credit —  
 20 dividend credit for a client, therefore dividend credit  
 21 advice. Your Lordship sees a reference to number of  
 22 shares and for good measure dividends per share, and it  
 23 then sets out payment details by reference to, as your  
 24 Lordship sees, gross dividend per share towards the  
 25 bottom of the page and next to that your Lordship sees

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1 withholding tax deducted and then net dividend.

2 If I can then ask your Lordship to look at a Telesto  
 3 credit advice notice. This goes to sample Solo 6.  
 4 {R6/25/3}. Again, your Lordship sees the format is  
 5 different. The categories of information are identical,  
 6 save that it is called a credit advice rather than  
 7 a dividend credit advice. Your Lordship sees that at  
 8 the top. And your Lordship sees there is still  
 9 a reference to withholding tax deducted.

10 The final Solo custodian, OPL, if we can look at  
 11 that, which relates to sample trade Solo 4, we have one  
 12 at {R4/19/3}, please. Thank you. Again, this has its  
 13 own unique format. Information in it is again identical  
 14 to WPD and Telesto, save that your Lordship sees it just  
 15 refers to tax rather than withholding tax deducted, and  
 16 it is labelled "Income advice", rather than credit  
 17 advice or dividend credit advice.

18 If we then look at custodian advice notices for  
 19 other custodians, if we can go to Lindisfarne —

20 MR JUSTICE ANDREW BAKER: Just before we do that, one thing  
 21 you did invite me in the reading list to have looked at  
 22 in advance if I had time was a sample of application  
 23 documentation — sorry, a set of application  
 24 documentation for each of some of the sample trades, and  
 25 I did do that.

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1 Can I just clarify something about those collections  
 2 of documents. It relates to one of the ones you were  
 3 just showing me, I think. If we look at {R6/25/3}.

4 MR RABINOWITZ: That is on the screen, I think — no.

5 MR JUSTICE ANDREW BAKER: That was the Telesto one, I think.

6 This is part of the example set of documentation with  
 7 a Telesto credit advice note.

8 If we just go on in that tab, we then get at page  
 9 {R6/25/6} the power of attorney confirming Acupay's  
 10 authority to submit the tax reclaim. You have then got  
 11 page {R6/25/7}, the tax residency, tax-free status  
 12 certification. In this case, it is a Labuan entity so  
 13 it comes in that form.

14 Then at page {R6/25/8} there is that, which goes on  
 15 for another nine or 10 pages. I have no idea what that  
 16 is. Is that in fact something that was submitted with  
 17 this?

18 MR RABINOWITZ: So, my Lord, that is not what is submitted  
 19 to SKAT, this is an internal SKAT payment document.

20 MR JUSTICE ANDREW BAKER: I guessed as much. All I was  
 21 simply going to say, so you have heard it, and if  
 22 I shouldn't have done what I am about to say I have  
 23 done, somebody can tell me what I should do instead,  
 24 because of that, and because I could see myself going  
 25 back to these little clips of documentation repeatedly

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1 during the course of the trial, I have saved for myself  
2 copies of each of the sets of documentation that you  
3 cited. This is paragraph 6.1(o) of the reading list,  
4 where you referred me to where I would find these, so  
5 I have downloaded and saved. But in each case if  
6 I found this sort of material at the back end, I have  
7 removed it. I'm hoping therefore that what I have then  
8 created for my own purposes is a little clip of the  
9 documents as presented to SKAT in each case.

10 I think I'm remembering, but I'm now going to let  
11 you down by not remembering which one it was, I think  
12 one of the references in the reading list was to the  
13 wrong tab, but I did find what I needed. I think it  
14 might be Lindisfarne 1, where the wrong tab was given.  
15 But there we are. That is for completeness only.

16 MR RABINOWITZ: We will see that right now because I am  
17 about to take you to —

18 MR JUSTICE ANDREW BAKER: Good. Thank you for that. My  
19 assumption was that was something that may have been  
20 associated with that application but wouldn't be part of  
21 the materials submitted and you have confirmed that,  
22 thank you.

23 MR RABINOWITZ: I did notice your Lordship looked at the  
24 power of attorney, which is itself interesting and  
25 I didn't take your Lordship to it, because it talks

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1 about making reclaims of taxes, et cetera, but ...

2 MR JUSTICE ANDREW BAKER: Yes, thank you.

3 MR RABINOWITZ: Can I then just show your Lordship an  
4 example of Lindisfarne and it is in relation to sample  
5 trade Lindisfarne 1.

6 MR JUSTICE ANDREW BAKER: Yes.

7 MR RABINOWITZ: Your Lordship will have that {R19/13/3}.

8 MR JUSTICE ANDREW BAKER: That is the one where in the  
9 reading list it was said to be R21.

10 MR RABINOWITZ: I apologise.

11 MR JUSTICE ANDREW BAKER: I found it anyway because you said  
12 it was Lindisfarne 1 so I could therefore find it.

13 MR RABINOWITZ: So again the core details are the same as  
14 your Lordship saw with the SCP CAN, albeit with the  
15 addition of an ex-date on this form.

16 MR JUSTICE ANDREW BAKER: Yes.

17 MR RABINOWITZ: Although there is no introductory language  
18 about crediting a payment representing the dividend, the  
19 document is of course headed, "Dividend credit advice".  
20 I'm not sure there is any other — it does also refer to  
21 tax again, not tax withheld, but just tax.

22 If we can then go to an example of Indigo, and this  
23 relates to sample trade Indigo 1 {R24/19/3}. Again,  
24 your Lordship sees the presentation is slightly  
25 different. It contains the same details as

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1 Lindisfarne 1, although here it is called the credit  
2 advice dividend — they take the three words and they  
3 get mixed around somewhat — instead of a dividend  
4 credit advice. Again, your Lordship sees the reference  
5 to tax rather than withheld tax, et cetera. But  
6 otherwise pretty much the same.

7 In terms of Maple Point, if I can show your Lordship  
8 the example for North Channel Bank, NCB 2, we have that  
9 at {R22/80/3}. Thank you very much. Here, your  
10 Lordship sees that the NCB CAN is labelled, "Dividend  
11 credit for non-resident taxpayer status", and again it  
12 is a different format from Indigo and Lindisfarne. It  
13 also contains some additional information in that it  
14 gives holdings as at — as a reference, that is actually  
15 a reference to the declaration date, and like WPD and  
16 the Telesto CANs it refers to tax deducted and indeed,  
17 as your Lordship sees, "Dividend subject to withholding  
18 tax".

19 MR JUSTICE ANDREW BAKER: Yes.

20 MR RABINOWITZ: And then if my Lord looks at the bottom of  
21 this notification, your Lordship sees a statement that  
22 this is "Not a tax certificate".

23 MR JUSTICE ANDREW BAKER: Yes.

24 MR RABINOWITZ: Now, we would respectfully suggest that  
25 whilst there may have been some significance to that in

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1 Germany, or for German tax purposes, NCB being a German  
2 bank, it doesn't change the import of the  
3 representations being made here. I understand that may  
4 be said to be more significant than that by one of the  
5 defendants but they will explain to your Lordship why  
6 that is so.

7 So far as concerns the Klar Scheme, and their  
8 custodian, as your Lordship knows, was Salgado —

9 MR JUSTICE ANDREW BAKER: Just before we go there, I haven't  
10 looked at them in detail, am I right to remember that it  
11 is NCB whose form and format of these credit advice  
12 notes includes some Ts and Cs on the back?

13 MR RABINOWITZ: Yes, that's right.

14 MR JUSTICE ANDREW BAKER: Yes.

15 MR RABINOWITZ: So Klar have as their custodian Salgado and  
16 we have an example of that at {R16/6/4}. Again,  
17 different format. The basic information is the same or  
18 very similar, including the reference to there being  
19 a tax amount, which is deducted from a gross dividend  
20 that has led to the payment of a net dividend. Your  
21 Lordship sees that.

22 My Lord, those then are the relevant documents in  
23 which the representations for which we contend are  
24 found.

25 MR JUSTICE ANDREW BAKER: Subject to this, Mr Rabinowitz,

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1 for completeness —  
 2 MR RABINOWITZ: Yes.  
 3 MR JUSTICE ANDREW BAKER: — I don't have in my head any  
 4 feel for proportionately the significance of these  
 5 examples to the whole, but your opening referred me to  
 6 the fact that some WHT refund claims were in fact  
 7 presented and processed by reference strictly speaking  
 8 to a predecessor form.  
 9 MR RABINOWITZ: That's correct. Your Lordship is right.  
 10 MR JUSTICE ANDREW BAKER: Which is, as it happens, something  
 11 I had not previously been aware of at all because others  
 12 in court will remember the first time I looked at least  
 13 in some detail at this documentation really was in the  
 14 Goal tax back summary judgment argument and I think  
 15 I even exhibited a copy of the form 06.003 to that  
 16 summary judgment. I think at that stage I — it is not  
 17 criticism of anybody, I think I probably came away with  
 18 an understanding that we were always going to be looking  
 19 at that form, so I think it may have been your written  
 20 opening that first properly made me aware that, at least  
 21 to some extent, we might be looking at a different form.  
 22 MR RABINOWITZ: Perhaps I should show that to your Lordship  
 23 because your Lordship has it in mind. Just to explain  
 24 what that is, it was a form used I think in four of the  
 25 25 of the sample trades. I note that for your Lordship.

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1 It is Solo 1 and 9, Salgado 1 and 2.  
 2 MR JUSTICE ANDREW BAKER: Yes.  
 3 MR RABINOWITZ: If I could show your Lordship an example of  
 4 that, {R16/6/2}, and this is in fact Salgado 1, sample  
 5 trade Salgado 1. Thank you very much.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: Again, your Lordship sees that it is a form  
 8 which is entitled, "Claim to relief from Danish dividend  
 9 tax".  
 10 MR JUSTICE ANDREW BAKER: Yes.  
 11 MR RABINOWITZ: And in the second box your Lordship sees  
 12 that it refers to the owner/usufructuary of the said  
 13 shares or participants. And I know there is a point  
 14 made by the DWF defendants about the reference to the  
 15 usufructs. Again, I will leave it to my learned friends  
 16 to develop that if they want. And then your Lordship  
 17 sees there are a number of headings, including column 2,  
 18 number of securities; column 7, total dividends;  
 19 column 8, percentage refund claims; column 9, refunds  
 20 claimed in Danish krone. And then in the next box your  
 21 Lordship sees there is a place for certification for  
 22 payment of dividends and it says, as your Lordship sees:  
 23 "This is to certify that the dividends stated in  
 24 column 7 were paid after deduction of dividend tax~..."  
 25 Does your Lordship see on the left—hand side, there

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1 is, "Attestation certification"?  
 2 MR JUSTICE ANDREW BAKER: Yes.  
 3 MR RABINOWITZ: If your Lordship looks at the italicised  
 4 parts of that:  
 5 "Certification for payment of dividends~..."  
 6 MR JUSTICE ANDREW BAKER: I have got there.  
 7 MR RABINOWITZ: I'm grateful.  
 8 MR JUSTICE ANDREW BAKER: So in this case, because this is  
 9 not a tax exempt example, this is a 15% example, you end  
 10 up with a certification in the form you have just stated  
 11 which is therefore on the face of things giving an  
 12 amount which will have been 27% of the gross dividend  
 13 amount.  
 14 MR RABINOWITZ: Correct.  
 15 MR JUSTICE ANDREW BAKER: Correct?  
 16 MR RABINOWITZ: Correct.  
 17 MR JUSTICE ANDREW BAKER: Which is then in fact different to  
 18 the refund amount claimed but that is because the refund  
 19 amount claimed is only the 12% excess of 15.  
 20 MR RABINOWITZ: Your Lordship is right. In terms of —  
 21 MR JUSTICE ANDREW BAKER: I think I picked up, but it may  
 22 just be one of those where by coincidence it happens to  
 23 be also an example of an instance where, perhaps without  
 24 going back to the applicant, something is assumed to be  
 25 an error and it is processed anyway. But in one of the

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1 examples you invited me to look at, I think for Solo 1,  
 2 which is on this form, that certification actually has  
 3 0.00 in it, even though there is in fact a claim made at  
 4 the full 27% deduction rate, and it may be, if it  
 5 matters, that that will be one where that was assumed to  
 6 be a claim on the basis of the full deduction or  
 7 clarification was sought, or whatever. But there it is.  
 8 All right. Thank you.  
 9 MR RABINOWITZ: So I don't think there is anything else  
 10 I was going to say about that, my Lord, other than  
 11 obviously to note, as your Lordship will have picked up  
 12 anyway, that these refund forms would always have been  
 13 accompanied by a credit advice notice, which may have  
 14 made the position clearer.  
 15 MR JUSTICE ANDREW BAKER: Yes.  
 16 MR RABINOWITZ: Can I then say something very briefly about  
 17 reliance.  
 18 MR JUSTICE ANDREW BAKER: Sorry, no, for absolute  
 19 completeness, if and to the extent that at the end of  
 20 the trial this detail matters, does the older style form  
 21 have in it language equivalent to the statement in the  
 22 form 06.003 that says attaching evidence of dividend  
 23 payment or similar is mandatory? You remember the bit  
 24 in italics to which you drew my attention?  
 25 MR RABINOWITZ: I do. I'm just quickly having a look.

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Skatteforvaltningen v Solo Capital Partners LLP &amp; Others

Day 1MT

1 I don't think it is, my Lord, in a way, no. I don't  
 2 think it has and I suspect what probably did the same  
 3 function was the attestation certification.  
 4 MR JUSTICE ANDREW BAKER: It may be that in practice, as far  
 5 as I'm concerned, as indicated by all the sample  
 6 examples, a credit advice note or dividend credit advice  
 7 was in fact always submitted but it may be that the form  
 8 itself did not say that providing something of that kind  
 9 is mandatory.  
 10 MR RABINOWITZ: Although, just looking at footnote 5 — your  
 11 Lordship sees certificate of full payment of dividends  
 12 in the attestation certification that I showed your  
 13 Lordship. If your Lordship then looks at footnote 5  
 14 itself, leaving aside the Danish and just concentrating  
 15 on the English:  
 16 "Certification shall be given by the company,  
 17 financial institution or any other institution paying  
 18 the dividends stated in column 7."  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: So perhaps it did require — the language is  
 21 "shall be given."  
 22 MR JUSTICE ANDREW BAKER: Yes, it is slightly odd, actually.  
 23 I mean — we can come back to it. On the face of  
 24 things, what is described here as the certificate of  
 25 deduction of tax item, with a footnote 5, is that part

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1 of the form that has to be signed on the bottom left.  
 2 MR RABINOWITZ: Yes.  
 3 MR JUSTICE ANDREW BAKER: Where there is a place for a dated  
 4 signature under that certification in respect of which  
 5 the footnote says that certification is supposed to have  
 6 been completed by — it would be the equivalent of  
 7 Lindisfarne or Salgado or whoever it might be, and  
 8 actually that is not completed at all in this example,  
 9 but it might be said that in its place the dividend  
 10 credit advice is provided. I see that.  
 11 MR RABINOWITZ: Yes.  
 12 MR JUSTICE ANDREW BAKER: All right, thank you.  
 13 MR HEAD: My Lord, I hesitate to interrupt —  
 14 MR JUSTICE ANDREW BAKER: If I am misreading that, then of  
 15 course.  
 16 MR HEAD: We think my Lord that the rubric you have just  
 17 been referring to underneath the signature, where it  
 18 says the certificate of deduction is to be given:  
 19 "... by the company, financial institution or other  
 20 institution paying the dividends stated in column 7."  
 21 That to be a reference to the actual issuing  
 22 company, the company paying out the dividend. So it is  
 23 an old form.  
 24 MR JUSTICE ANDREW BAKER: I see, re.  
 25 MR HEAD: It was then passed — following completion, there

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1 may have been an apprehension that it would be passed on  
 2 for certification to the issuing company itself.  
 3 MR JUSTICE ANDREW BAKER: I see that way of reading it,  
 4 Mr Head. But are you nonetheless agreeing with me that  
 5 that — in terms of the way in which the form is  
 6 structured, that appears to be intended to apply to the  
 7 little block on the bottom left and that, where here  
 8 there is in fact an uncompleted signature line, as  
 9 drafted this form is calling for a signature in that  
 10 place as being the attestation signature?  
 11 MR HEAD: My Lord, yes.  
 12 MR JUSTICE ANDREW BAKER: As distinct from the signature  
 13 bottom right, which is Goal as submitting agent signing  
 14 the form as a whole.  
 15 MR HEAD: Indeed.  
 16 MR JUSTICE ANDREW BAKER: Yes.  
 17 MR HEAD: Just while I am on my feet, my Lord, and apologies  
 18 to Mr Rabinowitz, we agree that this form does not  
 19 require any documentation to be sent along with it. The  
 20 reason for which — although in fact there are examples  
 21 of where forms did accompany them, but the reason why it  
 22 did not require that is because details of the dividend  
 23 and deductions were in the central part of the form, in  
 24 other words above the attestation, in contrast to the  
 25 later 003.

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1 MR JUSTICE ANDREW BAKER: I see that, yes. Thank you. That  
 2 is very helpful.  
 3 Yes, Mr Rabinowitz.  
 4 MR RABINOWITZ: Thank you. So just saying something very  
 5 briefly about reliance.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: Your Lordship will no doubt be aware of  
 8 a lively debate in recent years, both in some  
 9 authorities, and indeed also in some of the academic  
 10 writings, about whether there is an additional  
 11 requirement in the context of reliance that the claimant  
 12 must at least in some circumstances show that it gave  
 13 contemporaneous conscious thought to the fact that some  
 14 representations were being impliedly made.  
 15 We have addressed some of the authorities. Your  
 16 Lordship has seen them. I'm not going to get into the  
 17 detail of them. It is interesting. Your Lordship is  
 18 aware, or may not be aware, that there has been an even  
 19 more recent authority than the one we have referred to  
 20 there, so the debate carries on. This one was handed  
 21 down by Mr Justice Zacaroli in a case called Farol  
 22 Holdings v Clydesdale Bank. We have that — I'm not  
 23 inviting — perhaps I will invite your Lordship to look  
 24 at it very briefly, it's at {MAC/104/1}.  
 25 MR JUSTICE ANDREW BAKER: As we speak, then, as far as you

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1 are aware, at least chronologically speaking this is  
2 currently the last word on the topic? It may or may not  
3 be the last word on the topic in terms of authority  
4 ultimately, but this is the most recent description.

5 MR RABINOWITZ: Yes, although things move fast in this  
6 particular debate. I know things move fast, but there  
7 is a lot being said about it, it doesn't really move  
8 (inaudible) very much when you stand back. But  
9 19 March, and Mr Justice Zacaroli deals with this really  
10 beginning at paragraph 220 at page {MAC/104/46}.

11 MR JUSTICE ANDREW BAKER: Thank you.

12 MR RABINOWITZ: So perhaps to read to your Lordship,  
13 Mr Justice Zacaroli expresses in perfectly clear terms:  
14 "There was some debate, particularly in the parties'  
15 written submissions, as to whether there is a distinct  
16 requirement in all cases that the representation must be  
17 'actively present' to the representee's mind, or that  
18 the representee must have given 'contemporaneous  
19 conscious thought' to the representation at the time it  
20 was made. This is a question that has been given  
21 extensive recent consideration in~..."

22 The Leeds case, Loreley and and Crossley v  
23 Volkswagen by Mr Justice Waxman:

24 "The issue identified in the relevant passages in  
25 those cases was that sometimes the court has found that

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1 a misrepresentation was relied on, apparently without  
2 a finding that the representee gave conscious or active  
3 thought to the representation (see for example the cases  
4 [cited in Loreley]). An extreme example (discussed from  
5 ... Leeds) is the~..."

6 Over the page, thank you, {MAC/104/47}:  
7 " ... representation by a diner at a restaurant, made  
8 by the conduct of ordering a meal, that they have an  
9 intention to pay for it ... "

10 Sorry — thank you very much:

11 " ... that they have an intention to pay for it ... "

12 And then there is a reference to Ray, a criminal  
13 case, but often cited in the cases dealing with the  
14 misrepresentation in civil law:

15 "It is highly unlikely that the waiter who took the  
16 order gave any thought to whether such an implied  
17 representation was being made.

18 "As Cockerill J noted [in Loreley], the cases in  
19 which inducement has been found without distinct  
20 evidence of understanding or awareness are where the  
21 representation is simple and cannot be missed by the  
22 representee, and where it is at the heart of the  
23 transaction. In such cases, it might be said that the  
24 fact represented, albeit implied from some other conduct  
25 or statement, is so obvious it goes without saying.

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1 Unless, therefore, the representee actively thinks about  
2 it and decides not to rely on it, it might be said that  
3 it goes without saying that the representee relied on  
4 it. That would explain, for example, cases where  
5 someone who gives their opinion on a matter — where the  
6 facts are not equally known by both sides — may be held  
7 to make an implied statement that he knows facts which  
8 justify his opinion."

9 And there is a reference to Smith v Land and House:

10 "It will be rare, if ever, that a representee thinks  
11 further than that they trust the person giving the  
12 opinion and assume that he knows facts which support it.  
13 Yet the court is unlikely to require evidence that the  
14 representee actively thought at the time that the  
15 representation was being made."

16 Paragraph 223, if I could just show your Lordship  
17 that:

18 "I doubt the utility (as did Cockerill J) of  
19 breaking down this causation question into distinct  
20 elements and seeking to find a single universally  
21 applicable test for those elements. It is essential to  
22 keep in mind that in every case it is necessary to show,  
23 as a matter of fact, that the claimant's decision to  
24 take the action (or refrain from taking action) which  
25 caused it loss must have been caused by the

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1 representation made by the defendant. The evidence  
2 required to satisfy that requirement will differ greatly  
3 depending on where on the spectrum the case lies (from  
4 'it goes without saying', at one end, to a complex  
5 representation said to be implied from conduct and  
6 statements, at the other)."

7 Then I'm not going to get into what was said —

8 MR JUSTICE ANDREW BAKER: Apart from anything else, there  
9 are lots of aspects to that, and at the risk of getting  
10 metaphysical or neurological or something or other on  
11 a Monday morning in a Commercial Court trial, one aspect  
12 of that entire debate is that the court can recognise,  
13 at least as a distinct possibility, depending on the  
14 circumstances, that the making of a statement or conduct  
15 which we as lawyers would analyse in terms of  
16 a statement carrying with it an implication or conduct  
17 conveying a certain thing by implication can in fact  
18 operate upon somebody's mind without them being  
19 conscious of the fact that that is what is happening to  
20 them. Thus the waiter, if they were stopped and asked:  
21 are you only serving this chap because you are assuming  
22 he is intending to pay for it? He is almost certainly  
23 going to say yes. Why are you making that assumption  
24 they might in some respects actually struggle to  
25 articulate, depending on their sophistication and

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1 whether English is their first language.  
 2 MR RABINOWITZ: They might just ask you what you want for  
 3 your meal and to stop bothering them because it is so  
 4 obvious. My Lord, we say this is that sort of case, my  
 5 learned friend —  
 6 MR JUSTICE ANDREW BAKER: Or it may or may not be, because,  
 7 as I understand it, you also make a submission which we  
 8 will not go into any detail but it will be one thing  
 9 I will need to think about much later in the case, that  
 10 there can be, as it were, staged reliance, so that you  
 11 can have a case in which you can design a system that  
 12 says, which may in itself be a degree of box-ticking  
 13 that doesn't involve much conscious thought, if you  
 14 receive X, Y, Z, take action accordingly. That can be  
 15 instructions to human operators who are then doing that,  
 16 but if the reason you set that system up is because you  
 17 have formed the view that — for example an application  
 18 form, that if an application form has been filled in in  
 19 a certain way, that will be indicating certain  
 20 information that I'm happy to say is sufficient for  
 21 action to be taken, it is effectively that system design  
 22 coupled with the operation of that system at least  
 23 potentially might give rise to a finding of reliance,  
 24 although at the point of processing each individual  
 25 application you might not be able to say that the

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1 processor is actively looking at the material that we  
 2 will analyse in terms of the making of representations  
 3 and saying to themselves: am I being given  
 4 a representation by this person?  
 5 MR RABINOWITZ: Indeed.  
 6 MR JUSTICE ANDREW BAKER: Or something equivalent to that.  
 7 MR RABINOWITZ: Your Lordship's analysis of course explains  
 8 the point that is made in some of the writings about if  
 9 you are going to have to have active consideration each  
 10 time, what about some — it's effectively an automated  
 11 process where the process has been set up, there is not  
 12 a human being that is looking at it at that point.  
 13 MR JUSTICE ANDREW BAKER: It does mean it ends up becoming,  
 14 whatever else is true, a very fact-sensitive matter  
 15 where therefore it may or may not be important to get to  
 16 the bottom of some of the more esoteric legal debates  
 17 depending on what ultimate findings of fact I'm finding  
 18 myself making in terms of how SKAT actually did or did  
 19 not operate, did or not give conscious thought to  
 20 things, at what stage in the process, and so on.  
 21 MR RABINOWITZ: We do make in that context — and I'm not  
 22 treading back from anything your Lordship has said, we  
 23 do in that context also rely on what I think  
 24 Mr Justice Zacaroli said, he was really trying to  
 25 explain the waiter example, about there being cases

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1 where the position is just so simple and obvious that  
 2 there will be a reliance on implied representation, that  
 3 you don't need the metaphysical debate that may be  
 4 entailed in the active conscious consideration type  
 5 point. And we — as your Lordship said, it may or may  
 6 not be the case but our case is that actually this is a  
 7 case where it is obvious. If someone is applying for  
 8 a tax refund, there is a representation that some tax  
 9 has been withheld, but we will get there in the next  
 10 year.

11 MR JUSTICE ANDREW BAKER: Yes, all right. Thank you.

12 MR RABINOWITZ: Slowly. So I was then going to just say  
 13 this, my Lord, about the centrality of  
 14 misrepresentations and I touched on it when I described  
 15 the overall shape of the case, but I do need to just  
 16 address a point which is made by some of the defendants,  
 17 namely the suggestion that all of the causes of action  
 18 advanced by SKAT are, so it is said, dependent on SKAT  
 19 establishing each of the requirements for an English law  
 20 deceit claim.

21 With due respect to my learned friends, that is  
 22 largely correct, but it is subject, we would  
 23 respectfully submit, to four caveats or exceptions,  
 24 which I shall just identify, just so my learned friends  
 25 at least know what we say about this as well.

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1 The first and most obvious caveat is that if Danish  
 2 law applies, and in a sense this goes back to an  
 3 exchange your Lordship and I had; if Danish law applies,  
 4 as alleged by a number of defendants, then plainly it  
 5 will not be necessary for SKAT to satisfy your Lordship  
 6 in respect of all the requirements of an English law  
 7 cause of action for deceit. And in a way that is an  
 8 obvious point.

9 The second caveat is where the claim is based on  
 10 mistaken payment. Now, where a claim is based on  
 11 a mistaken payment, that is to say if you have a claim  
 12 in restitution or unjust enrichment, depending on what  
 13 you want to call it, the law does not require the  
 14 mistake to have been induced by a misrepresentation. It  
 15 doesn't really matter what the reason is for the  
 16 mistake, it could be negligence on the part of the  
 17 person making the mistake, it could be induced by  
 18 nothing at all other than their own negligence.

19 What matters there is that there is a mistake which  
 20 causes the payment to be made. And obviously claims in  
 21 unjust enrichment restitution are distinct from claims  
 22 in misrepresentation, and there are claims in unjust  
 23 enrichment restitution in this case, they do not depend  
 24 upon establishing a misrepresentation. They do  
 25 obviously depend on establishing that a mistake was

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1 made.  
 2 MR JUSTICE ANDREW BAKER: I hear and understand that as  
 3 a statement in the abstract. Is it correct, though,  
 4 that as pleaded —  
 5 MR RABINOWITZ: Yes.  
 6 MR JUSTICE ANDREW BAKER: — SKAT has pleaded  
 7 simpliciter: we made payments that were mistaken in the  
 8 sense that they were payments of — payments that so far  
 9 as SKAT was concerned were or were supposed to be  
 10 refunds of tax that had been paid and in fact there had  
 11 not been tax paid and without more we therefore have  
 12 a claim?  
 13 MR RABINOWITZ: I hope I'm going to answer your Lordship's  
 14 question, but can I answer it in this way and your  
 15 Lordship will say if I haven't.  
 16 SKAT does plead that it made mistaken payments, but  
 17 what it does also plead is that it made those mistaken  
 18 payments because of the misrepresentation.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: Because the misrepresentation part of that  
 21 allegation plea is unnecessary, so it doesn't really  
 22 matter why they made the mistake, if they made the  
 23 mistake, they made the mistake. In our respectful  
 24 submission — I mean, I'm only spending time on this for  
 25 the sake of completion, because in my respectful

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1 submission we will make out a misrepresentation case.  
 2 MR JUSTICE ANDREW BAKER: I follow that so far as it goes.  
 3 MR RABINOWITZ: Indeed. But I do want —  
 4 MR JUSTICE ANDREW BAKER: But you understand that a reason  
 5 why from time to time you may find your trial judge's  
 6 antennae just buzzing a little over what causes of  
 7 action are actually pleaded, as distinct, it might be,  
 8 from what causes of action could in theory exist but may  
 9 or may not be the causes of action SKAT has chosen to  
 10 plead, is that for example I am not clear in my mind,  
 11 and if we have to go there, we would have to go there,  
 12 whether the Supreme Court's decision decides that  
 13 a simple mistake claim that says on the part of a tax  
 14 authority: without reference to the basis of the mistake  
 15 we have in error paid out a tax refund that was not due,  
 16 whether there is actually a decision in the case that  
 17 that is not subject to the Revenue Rule.  
 18 MR RABINOWITZ: I understand —  
 19 MR JUSTICE ANDREW BAKER: I'm not suggesting by raising that  
 20 that I would form a view that it was subject to the  
 21 Revenue Rule, but whether —  
 22 MR RABINOWITZ: I understand.  
 23 MR JUSTICE ANDREW BAKER: — that isn't quite how SKAT has  
 24 ever pleaded its case — that then has the consequence  
 25 that it is not covered by the Supreme Court. It would

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1 then have the further consequence that it would then, in  
 2 theory, be open to the defendants to defend that claim  
 3 on the basis that it is of an argument that that gets  
 4 caught by the Revenue Rule, notwithstanding the Supreme  
 5 Court's decision, for example.  
 6 MR RABINOWITZ: My Lord, that is very clear. I am well  
 7 forewarned and we understand why your Lordship's  
 8 antennae are up about it.  
 9 MR JUSTICE ANDREW BAKER: It is not necessarily for the sake  
 10 of shutting out a possible claim rather than being  
 11 careful as to whether, if it is in play, that its being  
 12 in play has other ramifications.  
 13 MR RABINOWITZ: I entirely understand what your Lordship  
 14 said.  
 15 Anyway, that is our second caveat, subject to your  
 16 Lordship's caveat —  
 17 MR JUSTICE ANDREW BAKER: My caveat to your caveat. Yes.  
 18 MR RABINOWITZ: I'm not sure that I need to even mention  
 19 this, but obviously the proposition that you do not need  
 20 a misrepresentation for a mistake claim is one which is  
 21 supported by Supreme Court authority. That is Pitt v  
 22 Holt. I'm not going to say any more about it, because  
 23 if there is a debate about it, I don't think it is going  
 24 to be at that point.  
 25 The third caveat is that whilst it may be necessary

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1 to establish deceit against some defendants for the  
 2 purposes of the English law conspiracy claim, it is not  
 3 necessary to establish deceit against all the defendants  
 4 for that purpose. What I mean by that, my Lord, is  
 5 this: some defendants may be liable for conspiracy even  
 6 if they are not or could not be made personally liable  
 7 for any of the misrepresentations, because, for example,  
 8 their knowledge of the deception of SKAT by others made  
 9 it appropriate that they should be regarded as part of  
 10 the conspiracy even though you could not find that they  
 11 actually made the misrepresentation.  
 12 Equally, they may be responsible for other acts  
 13 carried out as part of the conspiracy, since removed  
 14 from the primary making of the misrepresentations, such  
 15 as for example money laundering. That is to say the  
 16 distribution of money thereafter. And those claims,  
 17 whilst they may depend upon someone being found liable  
 18 for the fraudulent misrepresentation, do not require  
 19 those defendants to be made liable for it.  
 20 The final caveat I was going to identify, my Lord,  
 21 is that SKAT does have an alternative claim against  
 22 Lindisfarne for negligent misrepresentation, and that is  
 23 a bit like the first of the ones, it is not the primary  
 24 caveat, but I should identify that.  
 25 MR JUSTICE ANDREW BAKER: Yes.

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1 MR RABINOWITZ: That was all I was going to say about, at  
 2 this stage, the misrepresentation part of the case.  
 3 MR JUSTICE ANDREW BAKER: Yes.  
 4 MR RABINOWITZ: My Lord, what I was going to do next is to  
 5 move to say something about the Solo Scheme — as I have  
 6 said earlier, it was the most important of the three  
 7 schemes — and really to take your Lordship through  
 8 a series of schematics we produced which are really  
 9 there to assist your Lordship in seeing where everyone  
 10 fitted into the picture. I don't think they have yet  
 11 been handed out but I think the defendants have all got  
 12 them and they are, I think, in the electronic version,  
 13 but we have A3 copies.  
 14 I'm going to take your Lordship through this, just  
 15 to identify how things work, and there are five pages  
 16 for Solo and then there are — we have schematics for  
 17 the other schemes as well.  
 18 Before I launch into the schematic, can I mention  
 19 two other documents which your Lordship has in addition  
 20 to all the written openings, where your Lordship will  
 21 have a good list of who is involved and what it is said  
 22 that they do.  
 23 Your Lordship has the dramatis personae.  
 24 MR JUSTICE ANDREW BAKER: Yes.  
 25 MR RABINOWITZ: At {A/93/1} and your Lordship also has

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1 a schedule of key fact documents which is at {A/94/1}.  
 2 Again, they will be — your Lordship may find those from  
 3 time to time very helpful in identifying which defendant  
 4 is said to be involved in what.  
 5 As I said, my Lord, the purpose of these schematics  
 6 is again intended to be neutral and intended to simply  
 7 identify schematically where people fit in.  
 8 They are online or on the electronic bundle at  
 9 {F/391/1}. Your Lordship has, I hope, now got the A3  
 10 versions.  
 11 MR JUSTICE ANDREW BAKER: I have, thank you.  
 12 MR RABINOWITZ: So if I can just take your Lordship through  
 13 this —  
 14 MR JUSTICE ANDREW BAKER: I can say without necessarily  
 15 claiming that I will have taken on board all of the  
 16 detail, I had identified and downloaded and looked  
 17 a little at copies of I think all five of these, if  
 18 there are five of them. So just checking, there is one  
 19 relating to — or, yes, relating to where different  
 20 parties fitted in, SKAT says, to the Solo Scheme, one  
 21 for the Maple Point Scheme, one for the Klar Scheme, and  
 22 then separately diagrams relating to Varengold Bank and  
 23 Dero Bank, which I understand is relating to the  
 24 investment activity to acquire interest in those banks,  
 25 rather than anything directly to do with the trading

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1 patterns.  
 2 MR RABINOWITZ: Correct, yes.  
 3 MR JUSTICE ANDREW BAKER: Thank you.  
 4 MR RABINOWITZ: So your Lordship has these and your Lordship  
 5 has looked at them and it may be I can take them more  
 6 quickly than I otherwise would. If I am going too  
 7 slowly or too fast, your Lordship will say so.  
 8 MR JUSTICE ANDREW BAKER: Thank you.  
 9 MR RABINOWITZ: Looking at the first slide, and again we can  
 10 move thorough this fairly quickly, that is intended to  
 11 identify for your Lordship the four Solo custodians.  
 12 MR JUSTICE ANDREW BAKER: Yes.  
 13 MR RABINOWITZ: These are obviously the organisations which  
 14 produced the CANs which supported the Solo applications.  
 15 Just to add some flesh to the bones, as your Lordship  
 16 sees, taking them in some sort of chronological order,  
 17 SCP, the third custodian in the row, was a custodian  
 18 from 2012–2015. OPL, the last one in the row,  
 19 from August 2014 to May 2015.  
 20 Telesto, the second of the custodians shown, was  
 21 from February 2015 to May 2015, and WPD, the first  
 22 custodian in the row, from February to May 2015 as well.  
 23 Each of the custodians is a defendant to these  
 24 proceedings but as your Lordship may recall, the claims  
 25 against them are stayed because they are all in

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1 administration. For your Lordship's note, the  
 2 reference, we don't need to go to that, is at  
 3 {C/14.1/1}.  
 4 Can I ask your Lordship, please, if you would, to go  
 5 to {B/6.1/1}, and if we can just open that, please.  
 6 Okay. So this is — your Lordship may have not seen  
 7 this before, it is the master application spreadsheet.  
 8 Just so your Lordship knows the status of this, none of  
 9 the active defendants have taken issue with the  
 10 spreadsheet, but it effectively is a spreadsheet which  
 11 has information relating to all the applications for  
 12 which SKAT paid out.  
 13 Now, the application —  
 14 MR JUSTICE ANDREW BAKER: So this is the master schedule as  
 15 attached to the particulars of claim, just listing out  
 16 all of the applications paid by SKAT individually making  
 17 up between them the universe of claims.  
 18 MR RABINOWITZ: Precisely. It is simply so that your  
 19 Lordship has that factual information, which is useful  
 20 when you want to get a sense of who was responsible for  
 21 doing what or how much, if I can put it that way.  
 22 Now, this spreadsheet can be a bit fiddly and rather  
 23 than taking up time trying to find the right parts,  
 24 subject to your Lordship, I think this has been agreed  
 25 with the other parties, Mr Goldsmith is going to take

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1 responsibility for operating the spreadsheet to get us  
 2 to the right place as quickly as we can. If he doesn't  
 3 do it well, we can sack him and get someone else to do  
 4 it.  
 5 But if your Lordship looks first at column K — he  
 6 will sack me before that happens, I can tell you.  
 7 If you look at column K, my Lord, your Lordship  
 8 sees, Mr Goldsmith is doing this, you can use the filter  
 9 arrow at the top left — hand column to limit it to the  
 10 Solo custodians, which I think Mr Goldsmith has done.  
 11 MR JUSTICE ANDREW BAKER: Yes.  
 12 MR RABINOWITZ: And you can then highlight column D and what  
 13 that enables you to see, looking at the bottom  
 14 right — hand side —  
 15 MR JUSTICE ANDREW BAKER: I see, yes.  
 16 MR RABINOWITZ: — is the total sum that was paid out in  
 17 respect of Solo applications from those four platforms.  
 18 MR JUSTICE ANDREW BAKER: Yes.  
 19 MR RABINOWITZ: So you get the figure there of just under  
 20 6 — is it — 9.025 billion Danish krone, that is  
 21 £1.077 billion, approximately.  
 22 MR JUSTICE ANDREW BAKER: Yes.  
 23 MR RABINOWITZ: That was also the total amount paid out by  
 24 SKAT by way of purported tax refunds in response to the  
 25 Solo applications.

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1 If we then filter column K to limit it to Solo  
 2 Capital Partners, so looking now at each of the  
 3 custodians separately.  
 4 MR JUSTICE ANDREW BAKER: Yes.  
 5 MR RABINOWITZ: So we limit to Solo, we highlight D, and  
 6 that shows the amount of WHT claimed and paid by SKAT in  
 7 response to SCP CAN Solo applications, and again your  
 8 Lordship sees at the bottom, krone 5.440 billion.  
 9 MR JUSTICE ANDREW BAKER: Yes, yes.  
 10 MR RABINOWITZ: £649 million, approximately. And then if  
 11 we do the exercise again for OPL, by filtering so it is  
 12 only OPL, and we again highlight D — you've done that  
 13 already that's very good. Your Lordship sees  
 14 1.84 billion Danish krone in respect of OPL CANs, if  
 15 I can put that way.  
 16 If we do that again for Telesto, highlighting column  
 17 K and highlighting column D, and again your Lordship  
 18 sees 920 million Danish krone there, 110 million for  
 19 Telesto CANs.  
 20 If we then go back to column K and we filter it for  
 21 WPD, West Point, again highlighting D, your Lordship  
 22 seeing the figure at the bottom of 881 million krone,  
 23 £105 million.  
 24 Since we have the master spreadsheet open, it might  
 25 just be worth showing your Lordship the split of Solo

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1 applications between 2012–2013 and 2014–2015, and your  
 2 Lordship will see the reason for this if we do that. If  
 3 we go back to column K and we select all four  
 4 applicants, all four Solo custodians, and we go back to  
 5 column I, 2012–2013, your Lordship will see that throws  
 6 up a figure, right — hand bottom, of 719 million krone,  
 7 that is £85.8 million out of a total of 9.025 billion  
 8 Danish krone, and that is 8%, my Lord. So if you break  
 9 it down, we will do the figure again, but it is 8% in  
 10 20112–2013 and 92% in 2014–2015, and that gives your  
 11 Lordship a sense of how the scheme accelerated over  
 12 time.  
 13 I don't think we even really need to do it for the  
 14 other pair, because one assumes the spreadsheet will  
 15 produce the 92% figure, your Lordship sees at the bottom  
 16 there 8 billion — odd Danish krone, that is £992 million,  
 17 which is 92%.  
 18 MR JUSTICE ANDREW BAKER: I envisage, since all that  
 19 information is there in a spreadsheet and it looks as if  
 20 there are members of your team that know how to work  
 21 spreadsheets, and even if there aren't members of the  
 22 team who are this able to work spreadsheets, I'm sure  
 23 there are somewhere, on the basis that to at least an  
 24 external pair of eyes sometimes pictures paint more  
 25 words and more quickly than lots of words, in due course

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1 at some point in the case — I'm now looking all the way  
 2 ahead to what might even be useful to have in a future  
 3 judgment, whatever the decision on the different issues  
 4 might be — some of that I'm sure could be illustrated  
 5 by graphs rather than by descriptions.  
 6 MR RABINOWITZ: Definitely. It is much clearer.  
 7 MR JUSTICE ANDREW BAKER: The graphs by numbers of  
 8 applications made against time.  
 9 MR RABINOWITZ: Definitely.  
 10 MR JUSTICE ANDREW BAKER: Either in aggregate, broken down  
 11 across the three different schemes, and so on, and  
 12 value. Not to excess, but a few as (inaudible —  
 13 overspeaking).  
 14 MR RABINOWITZ: It will not be difficult to do, we just have  
 15 our graphs for each scheme and we will produce those for  
 16 your Lordship, certainly long before closing.  
 17 So that is that. If we then go on to slide 2,  
 18 page 2 of this. It is slightly more complicated —  
 19 well, not slightly; much more complicated.  
 20 MR JUSTICE ANDREW BAKER: Sorry, and that pattern —  
 21 obviously this is not a precise match to the breakdown  
 22 you just showed me, with Mr Goldsmith's help, between  
 23 the ex — date cut — offs but that pattern of an accelerating  
 24 volume and value of refund claims being made by what you  
 25 call the Solo Scheme explains why, when one gets to, for

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1 example, the DWF defendants, your total claim alleged  
 2 against them as regards participation in the Solo Scheme  
 3 is proportionately a modest percentage of the  
 4 Solo Scheme total, even though it still is a very large  
 5 number in absolute terms.  
 6 MR RABINOWITZ: Indeed.  
 7 MR JUSTICE ANDREW BAKER: Yes.  
 8 MR RABINOWITZ: I mean, one of the stories of this case  
 9 which emerges as you look into the detail is that  
 10 everyone involved — not everyone. At some point people  
 11 realise they could make money by going off on their own.  
 12 So they start with Solo and everyone thinks: well, this  
 13 is good, but why am I sharing what I am having to share  
 14 with X or Y, Mr Sanjay Shah, why don't I do something of  
 15 my own? You get to the applicants themselves, which we  
 16 will in due course, who get introduced by someone, at  
 17 some point the applicants, some of them, think why are  
 18 we doing it through the introducer or through people,  
 19 which means that our cut of what we are getting is X,  
 20 whereas if we sign directly with Sanjay Shah, it will be  
 21 X plus whatever it is per cent. That is the story of  
 22 this case, as your Lordship sees, because everyone  
 23 thinks this is fantastic, why don't we do this and make  
 24 more for ourselves.  
 25 So the Maple Point people split off to do it

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1 themselves at a time when the Solo Scheme starts really  
 2 accelerating.  
 3 MR JUSTICE ANDREW BAKER: Yes, thank you.  
 4 MR RABINOWITZ: So we have slide 2 open. Your Lordship will  
 5 also find this online or electronically at {F/391/2}.  
 6 MR JUSTICE ANDREW BAKER: Yes.  
 7 MR RABINOWITZ: What your Lordship sees on this slide is  
 8 that in addition to Solo custodians, who are still there  
 9 in blue, we also show in orange the owners and other  
 10 relevant persons associated with the Solo custodians.  
 11 MR JUSTICE ANDREW BAKER: Yes.  
 12 MR RABINOWITZ: If I can just take your Lordship through  
 13 this relatively briefly, starting with Mr Sanjay Shah,  
 14 your Lordship sees him shown in the top right-hand  
 15 orange box.  
 16 MR JUSTICE ANDREW BAKER: Yes.  
 17 MR RABINOWITZ: And that is because, as is admitted by the  
 18 SS defendants' written openings at paragraph 164, we  
 19 don't need to turn that up, Sanjay Shah was the ultimate  
 20 beneficial owner of all of the four Solo custodians, as  
 21 well as the various corporate SS defendants that we list  
 22 here that you find between him and the custodians,  
 23 including immediately below Mr Sanjay Shah, your  
 24 Lordship sees SCL and AESA, and then a level down your  
 25 Lordship sees Solo Holdings and then in the middle of

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1 the slide, just moving to the left of the slide, your  
 2 Lordship sees an entity called Elysium Global.  
 3 MR JUSTICE ANDREW BAKER: Yes.  
 4 MR RABINOWITZ: Then to the left of that your Lordship sees  
 5 another Elysium entity called Elysium Dubai. Does your  
 6 Lordship see that, to the left and down?  
 7 MR JUSTICE ANDREW BAKER: Yes.  
 8 MR RABINOWITZ: And then further to the left of that your  
 9 Lordship sees also Treefrog, which was formerly known as  
 10 Arche Cayman, and also Ganymede, which is a company  
 11 which looms large in the story.  
 12 MR JUSTICE ANDREW BAKER: Yes.  
 13 MR RABINOWITZ: Sanjay Shah also admits, as your Lordship  
 14 may have picked up, that he was also the ultimate  
 15 beneficial owner of what we call the conduit companies,  
 16 that is further to the left and down, and I will come  
 17 back to those shortly as well. You see them as ACAI,  
 18 Fire, Philo and Parla.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: It is also not in dispute that not only was  
 21 Sanjay Shah the ultimate owner but he was also — this  
 22 is admitted by the SS defendants in their opening — he  
 23 was also the controlling mind of all of these companies.  
 24 That is at paragraph 165 of the SS defendants' written  
 25 opening. Again, I don't invite your Lordship to go

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1 there yet but it is {F/382/66}.  
 2 The position with respect to control of the Solo  
 3 custodians is a little bit more complex. Not much, but  
 4 a little bit more, because Sanjay Shah admits that he  
 5 was the CEO of SCP, so the one second to the right,  
 6 until January 2014. It is a blue custodian. And in  
 7 2014, January 2014, Ms Stratford took over the role of  
 8 CEO of SCP.  
 9 MR JUSTICE ANDREW BAKER: Yes.  
 10 MR RABINOWITZ: That for your Lordship is identified in the  
 11 list of common ground points at paragraph 14(b) we don't  
 12 need to go there, {A/42/14}. But as my Lord may have  
 13 picked up, there is a slight dispute as to whether  
 14 Ms Stratford, even after she became CEO, continued to  
 15 act on Sanjay Shah's directions and instructions even  
 16 though she had replaced him as CEO. We will have to get  
 17 into that with the witnesses in the evidence.  
 18 There is also a similar dispute as to Sanjay Shah's  
 19 role in connection with the three other custodians, WPL,  
 20 OPL and Telesto, and again those are matters that are  
 21 going to need to be explored with the witnesses.  
 22 My Lord, I can't recall when you said you wanted to  
 23 take the afternoon break.  
 24 MR JUSTICE ANDREW BAKER: As near as a convenient point  
 25 allows it to 3 o'clock.

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April 15, 2024

Skatteforvaltningen v Solo Capital Partners LLP &amp; Others

Day 1MT

1 MR RABINOWITZ: I think now then would be a mid—point.  
 2 MR JUSTICE ANDREW BAKER: Very good. Let's take the break,  
 3 then and as I said this morning, because we have  
 4 a slightly shorter sitting afternoon, deliberately so,  
 5 if we try to keep the afternoon break to the minimum we  
 6 can all manage, just to stretch legs and take a comfort  
 7 break if we need it.  
 8 Five minutes or so. Thank you.  
 9 (2.57 pm)  
 10 (A short break)  
 11 (3.04 pm)  
 12 MR JUSTICE ANDREW BAKER: Yes, Mr Rabinowitz. Thank you.  
 13 MR RABINOWITZ: My Lord, I was just going to ask your  
 14 Lordship if we could go back to SCP, which is the third  
 15 custodian shown in blue.  
 16 MR JUSTICE ANDREW BAKER: Yes.  
 17 MR RABINOWITZ: That, as your Lordship may have picked up  
 18 from the footnotes, was a partnership incorporated on  
 19 13 September 2011. Immediately above SCP your Lordship  
 20 sees that there is a box in which we identify certain  
 21 members of SCP and your Lordship ought to see some  
 22 familiar names there, including a number of the  
 23 corporate defendants, as well as the number of the  
 24 independent defendants.  
 25 MR JUSTICE ANDREW BAKER: Yes.

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1 MR RABINOWITZ: Your Lordship sees SCL, Solo Holdings,  
 2 Jas Bains, Mr Horn, Mr Jain, Mr Hoogewerf, Mr Patterson,  
 3 Mr Sanjay Shah and Elysium Dubai.  
 4 MR JUSTICE ANDREW BAKER: Yes.  
 5 MR RABINOWITZ: I can ask your Lordship if we can then  
 6 please go to the document we have at {MTK/28/1}. Thank  
 7 you very much. As your Lordship sees, this is  
 8 a Companies House document and your Lordship might find  
 9 this a useful document because it identifies not only  
 10 which individuals and corporate entities were members of  
 11 SCP but also the period during which they were a member.  
 12 What I propose to do, subject to your Lordship, is to  
 13 point out certain defendants identified by this document  
 14 and give your Lordship a high level explanation of where  
 15 they fit into the Solo schematic.  
 16 I am going to try at this stage to avoid going into  
 17 too much detail as to what they did as part of the  
 18 Solo Scheme because I will deal with that anyway as we  
 19 come to the chronological run through of the schemes  
 20 both in 2012–2013 and indeed thereafter.  
 21 So just on MTK/28, if you have that open and you  
 22 look back at the schematic for a moment, if I can start  
 23 with the defendants who are corporate members of SCP,  
 24 all of whom, as I have noted, were ultimately owned by  
 25 Sanjay Shah, as he has admitted. The first one listed

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1 in the orange box above SCP, as your Lordship sees, is  
 2 SCL, that is Solo Capital Limited, and if your Lordship  
 3 then looks at the document we have on screen,  
 4 {MTK/28/4}, your Lordship sees, second entry in, Solo  
 5 capital, a member of SCP from — again your Lordship  
 6 sees this from the document, 13 September 2011 to  
 7 2 February 2015. That is just to remind your Lordship,  
 8 and your Lordship may recall, that SCL is one of the  
 9 default judgment parties against whom SKAT has default  
 10 judgment on liability but not quantum.  
 11 In fact, as your Lordship may recall, we explain  
 12 this in our main skeleton, paragraph 70.1, I'm not going  
 13 to turn it up, SCL was actually the first Solo entity  
 14 incorporated by Mr Sanjay Shah and between 2009 and 2011  
 15 it was the main regulated entity for Solo's business  
 16 activities in the United Kingdom, 2009 to 2011 being the  
 17 period in which Solo was involved in German  
 18 cum—ex trading, which as your Lordship may recall forms  
 19 part of the background to the Solo Scheme.  
 20 But perhaps I can just mention now that, again as  
 21 your Lordship will have picked up from our main  
 22 skeleton, aside from Sanjay Shah, the defendants  
 23 involved with SCL were — and again these are familiar  
 24 names to your Lordship — Mr Rajen Shah and  
 25 Mr Guenther Klar, who was then called

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1 Guenther Grant—Klar and they joined SCL in 2009, as well  
 2 as Mr Graham Horn and Jas Bains, both of whom joined in  
 3 2010.  
 4 SCL's main role in the events between 2012 and 2015  
 5 was, as your Lordship may have picked up, twofold.  
 6 First, it was until April 2014 the owner of  
 7 Elysium Dubai, when that company was transferred to the  
 8 ownership of Elysium Global. That again is common  
 9 ground with the defendants.  
 10 Secondly, SCL was the corporate vehicle through  
 11 which from 1 April 2012 to 2 February 2015 Sanjay Shah  
 12 formally participated in the management of SCP.  
 13 The reason for that date range, my Lord, is that  
 14 Sanjay Shah was personally a member of SCP until  
 15 31 March 2012 and you can see that if we go to the  
 16 document we have on the screen and go to page  
 17 {MTK/28/3}. Thank you. Just looking at the Sanjay Shah  
 18 entry. Your Lordship sees he resigned on 31 March 2012.  
 19 MR JUSTICE ANDREW BAKER: Yes.  
 20 MR RABINOWITZ: SCL ceased to be a member of SCP on  
 21 2 February 2015 and your Lordship has seen that entry.  
 22 The second corporate member of SCP, again your  
 23 Lordship sees it from the orange box, was Solo Group  
 24 Holdings. We refer to it as Solo Holdings in that box  
 25 as well, and just seeing where in a fitted in, we just

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1 saw that SCL resigned as a member of SCP on  
2 2 February 2015 and as your Lordship sees if we go to  
3 page 1 of the document we have on the screen, your  
4 Lordship sees Solo Group Holdings, Solo Holdings, became  
5 a member of SCP the same day, taking over SCL's role as  
6 the corporate member of SCP.

7 Just to remind your Lordship of this, although, as  
8 you may recall, Solo Holdings is a defendant in these  
9 proceedings, again the claims against it are stayed  
10 because it is also in administration along with the Solo  
11 custodians.

12 Now, Solo Holdings' role in the story is in brief  
13 that it was the owner of OPL, shown on the graph, and  
14 you can see that from the line coming out of OPL.

15 MR JUSTICE ANDREW BAKER: Yes.

16 MR RABINOWITZ: In addition, in 2015 it also acquired the  
17 shares in Novus, that was one of the brokers that was  
18 involved in the Solo model, and I will come back to  
19 that, if I may.

20 Solo Holdings was also the entity that in late 2014  
21 entered into exclusivity agreements with the tax agents,  
22 Goal and Acupay. That is all common ground.  
23 Effectively what was happening in that period is that  
24 the Solo Scheme was concerned by the fact that there  
25 were competitor schemes and it was trying to lock its

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1 tax agents into only putting in its applications, if  
2 I can put it that way.

3 Just staying then with slide 2 of the Solo  
4 schematic, just looking at the third corporate member of  
5 SCP, your Lordship sees Elysium Dubai mentioned there  
6 and Elysium Dubai was another SCP member and one of the  
7 SS defendants. I have already mentioned that it was  
8 owned by SCL until April 2014. At that point it was  
9 called Solo Capital Dubai Limited and its ownership was  
10 in April 2014 transferred to Elysium Global.

11 Now, Sanjay Shah remained the ultimate owner of  
12 Elysium Dubai at all times and your Lordship sees that  
13 reflected on slide 2 on the left —hand side and we also  
14 note that in the footnote to the Elysium Dubai box.

15 Now, as again I apprehend my Lord will have picked  
16 up, Elysium Dubai was in effect the Solo Dubai office.  
17 It was where Sanjay Shah was based at all material times  
18 and it was where all the other Solo defendants moved or  
19 joined over time. That actually includes Mr Klar,  
20 Rajen Shah, later Mr Graham Horn, and Mr Dhorajiwala,  
21 and they all worked as either employees or consultants  
22 to Elysium Dubai or as consultants to Mr Sanjay Shah  
23 personally.

24 If your Lordship just glances at footnote 8 to  
25 slide 2, your Lordship sees, this is common ground, the

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1 dates in 2013 on which the DWF defendants —

2 MR JUSTICE ANDREW BAKER: Yes.

3 MR RABINOWITZ: — cease to work for Sanjay Shah and the  
4 Solo Scheme. Rajen Shah ceased to work for Solo  
5 in April 2013; Graham Horn, June 2013; Mr Dhorajiwala  
6 September 2013, all dates at a time when Elysium Dubai  
7 was still part of the Solo Group.

8 If we then go back to the slide and just look at —  
9 we have looked at the corporate members of SCP, that is  
10 to say SCL and Solo Holdings, if your Lordship looks at  
11 the orange box immediately above SCP, again your  
12 Lordship has seen a number of the defendants were  
13 individual members of SCP. Again, just to put some  
14 flesh on that for your Lordship, if we go back to the  
15 document we have on the screen at {MTK/28/1} I will just  
16 show you some other defendants who are shown here.

17 If we go to page 1, we are there, your Lordship sees  
18 a reference to Mr Jas Bains. If we go over the page  
19 {MTK/28/2}, your Lordship sees he was a member  
20 from March 2012 to July 2013. July 2013 is when he left  
21 SCP and he thereafter acted until the summer of 2014 as  
22 a consultant to Sanjay Shah personally.

23 If we then just go to page — we are on page 2 of  
24 the company search. Your Lordship sees a reference for  
25 Mr Horn, Graham Mckenzie Horn, recorded here as being

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1 an SCP member from March 2012 until February 2013.  
2 Again, this is not in dispute, at that point he moved to  
3 Dubai to be employed by Elysium Dubai. And again that  
4 is accepted by the DWFs in their written opening,  
5 paragraph 267.

6 So far as concerns Mr Horn, it is common ground that  
7 he was the chief operating officer of SCP whilst there  
8 and a member of its management committee.

9 He was also the head of the GSS department  
10 until June 2013 when he left Solo. He was replaced in  
11 that role by Mr Dhorajiwala, who also shortly thereafter  
12 in September 2013 left Solo, and again that is common  
13 ground.

14 Just pausing there, on the subject of the GSS  
15 department, that department, as your Lordship may have  
16 picked up from the parties' written openings, was Solo's  
17 custody and clearing business. It was the group at Solo  
18 which effectively oversaw the Solo model trading and  
19 settlement and it also oversaw the production of the  
20 credit advice notices or the DCAs.

21 Then just looking further at slide 2, if your  
22 Lordship glances at footnote 5, we see there is  
23 a reference to other members of the GSS team, including  
24 Mr Omar Arti, who was the head of GSS  
25 from February 2014, Nirav Patel, Adam Forsyth, Martin

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1 Ward, Jason Browne and Jess Spoto. My Lord, I'm sorry  
 2 to be taking so much time over this, but it is a useful  
 3 way in which to identify the people who are going to —  
 4 who your Lordship is going to see and hear from.  
 5 MR JUSTICE ANDREW BAKER: Thank you.  
 6 MR RABINOWITZ: Again, for your Lordship's note the people  
 7 who I have just mentioned, they are all identified as  
 8 members of GSS at paragraph A1(a)(3) of Mr Patterson's  
 9 defence.  
 10 If we can go back to the document we have on the  
 11 screen at {MTK/28/7}, your Lordship sees second entry in  
 12 a reference to Mr James Edward Hoogewerf. He became  
 13 an SCP member from September 2012, stayed a member  
 14 until March 2014. I will come back to him when I say  
 15 something about the other Solo custodians.  
 16 On the same page that we have on the screen, page 7,  
 17 a little lower down, your Lordship sees a reference to  
 18 Mr Mankash Jain, recorded here as an SCP member  
 19 from March 2012 to 31 January 2014, after which, as your  
 20 Lordship may have picked up, he went up to set up the  
 21 Malaysian Solo applicants alongside two other members of  
 22 the SCP members who are recorded in the document, so  
 23 again one sees this fertilisation of other players from  
 24 within Solo.  
 25 If your Lordship can please go to page {MTK/28/11}

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1 of the document we have on screen, your Lordship sees  
 2 a reference there to Michael Smyth, recorded as a member  
 3 of SCP from 31 March 2012 to 31 January 2014.  
 4 Immediately below that your Lordship sees a reference to  
 5 Michael Turner, a member from 1 December 2012 to  
 6 31 January 2014.  
 7 If we go back to page 9, two entries down, your  
 8 Lordship sees a reference to Mr Patterson,  
 9 Mark Patterson, also known, as your Lordship will have  
 10 picked up, as Pogo. He remains a defendant, albeit  
 11 currently incarcerated in Denmark following his  
 12 conviction there, and the person — Mr Patterson is the  
 13 person that Sanjay Shah in his interview with SOIC —  
 14 described by Mr Sanjay Shah as his lieutenant. That,  
 15 for your Lordship's note, I don't think we need to go  
 16 there, is {MTKC26/587/26}.  
 17 Now, Mr Patterson, your Lordship will see, is  
 18 recorded as a member of SCP from March 2013  
 19 to January 2014, after which he moved to Dubai and  
 20 worked for Elysium Dubai and Sanjay Shah personally  
 21 through his various corporate vehicles.  
 22 I have already mentioned to my Lord and we will need  
 23 in due course to look more carefully at Mr Patterson's  
 24 role in coordinating all the trading.  
 25 Now, just turning to the other custodians, I can

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1 deal with these substantially more quickly, I hope, so  
 2 slide 2, your Lordship sees in one of the blue boxes on  
 3 the right — hand side OPL, Old Park Lane. From the  
 4 schematic itself your Lordship can see it was owned by  
 5 Solo Holdings, if you follow the solid, unbroken line,  
 6 and then ultimately owned by Sanjay Shah. Your Lordship  
 7 follows the lines and sees that.  
 8 The director and CEO of OPL, at least from around  
 9 mid-2015 to the end of 2015, again this is not in  
 10 dispute, is Mr Charles Knott, who is of course one of  
 11 the defendants before your Lordship.  
 12 Then looking across at WPD, which is the first in  
 13 line of the custodians in blue, if your Lordship sees  
 14 immediately above that, it is owned, at least 90% owned,  
 15 by the wonderfully named Hooloomooloo, that is again one  
 16 of the SS defendants and it was, as Mr Shah admits,  
 17 ultimately owned by Mr Shah.  
 18 MR JUSTICE ANDREW BAKER: Yes.  
 19 MR RABINOWITZ: And it is common ground, my Lord, that  
 20 Mr James Hoogewerf, a defendant, was a director of WPD  
 21 from September 2013, which was the date of its  
 22 acquisition by Hooloomooloo. He was also its CEO  
 23 from October 2013 and then that's in the list of common  
 24 grounds at paragraph 531(i).  
 25 The final custodian, Telesto, your Lordship sees,

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1 second box, blue, that was a partnership incorporated on  
 2 10 October 2013. It had various members including  
 3 Solo Holdings and again Mr Hoogewerf, and I don't think  
 4 I need to say anything else about it for the moment.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: Just still on slide 2 but focusing next, if  
 7 I may, on Ganymede, and the conduit companies —  
 8 MR JUSTICE ANDREW BAKER: Just before we do that and going  
 9 back to those custodians, and in fact going all the way  
 10 back to SCP, since we still have the document on screen,  
 11 the Companies House return with all of the historic  
 12 lists of the members of that as an LLP, the  
 13 correspondence address that is given, if not for all of  
 14 them, for the vast majority of them, of 10 Exchange  
 15 Square was whose address connected to SCP?  
 16 MR RABINOWITZ: It is Solo's office, I think that is where  
 17 Mr Sanjay Shah was. Was it SCP's office as well? It  
 18 was SCP's office, my Lord.  
 19 MR JUSTICE ANDREW BAKER: As distinct from  
 20 4 Throgmorton Avenue, which is the address I think that  
 21 appears on the Solo credit advice notes, or have I got  
 22 that wrong?  
 23 MR RABINOWITZ: I think they moved.  
 24 MR JUSTICE ANDREW BAKER: They moved. Right, thank you.  
 25 MR RABINOWITZ: I will check that and come back to you, but

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1 I think they moved, my Lord.  
2 MR JUSTICE ANDREW BAKER: But it is an address connected to  
3 the LLP rather than to any given individual or  
4 otherwise?

5 MR RABINOWITZ: That is my understanding, my Lord.  
6 So Ganymede first, your Lordship sees at the bottom  
7 left —hand side. I have already noted that it is not in  
8 dispute that Sanjay Shah was the ultimate owner of  
9 Ganymede. The directors of Ganymede again included some  
10 familiar names including Rajen Shah and Mr Horn,  
11 although as we have explained in the DWF annex, I don't  
12 think we need to turn that up, Rajen Shah was a director  
13 on 20 September 2011. He left on 1 April 2013. Mr Horn  
14 was a director from April 2013 but also left  
15 in June 2013.

16 Now, as my Lord will have picked up, Ganymede is an  
17 entity of some significance in this matter, because, as  
18 your Lordship will have seen, it is the entity to which  
19 the lion's share of the proceeds of the Solo  
20 applications were made, and the entity which in turn  
21 paid a number of the other participants in the  
22 Solo Scheme. Again, your Lordship will have seen this,  
23 and we will get into the detail of this, there were  
24 arrangements in place whereby although the applications  
25 were made by the applicants, they effectively ceded most

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1 of the money to Ganymede.  
2 We cover this in our main skeleton between  
3 paragraphs 112 and 113. I don't think we need to turn  
4 that up, but perhaps I can just summarise the key points  
5 for your Lordship as follows.  
6 MR JUSTICE ANDREW BAKER: Yes.  
7 MR RABINOWITZ: All Solo applicants were clients of  
8 Ganymede, with whom they entered into consultancy or  
9 advisory agreements. Pursuant to those agreements,  
10 either called consultancy or advisory agreements,  
11 Ganymede was paid a success fee by way of a percentage  
12 of the proceeds of the Solo applications, so by way of  
13 a percentage of the refund, ranging from between 63–95%.  
14 MR JUSTICE ANDREW BAKER: Yes.  
15 MR RABINOWITZ: Ganymede then in turn itself also made  
16 payments to the trading counterparties in the Solo model  
17 and also to those who were introducers of the Solo  
18 applicants. So Ganymede — the applicants themselves  
19 keep some, most of it goes to Ganymede. Ganymede then  
20 make payments to the trading counterparties and also  
21 make payments to the people who introduced, put together  
22 the package of Solo applicants, including in both cases  
23 to persons who are defendants in this claim and who fell  
24 into one or other or both of those categories.  
25 Again, I will go back into the detail of that in the

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1 course of the week.

2 If your Lordship then —  
3 MR JUSTICE ANDREW BAKER: Is it right that — again, as with  
4 many questions one has in this case one needs to phrase  
5 it in terms of other things being equal and without  
6 prejudice to submissions that may or may not be made as  
7 to reality versus appearance and so on, but other things  
8 being equal and taking relevant documentation at face  
9 value, at least some of those who are engaged in one way  
10 or the other in the trading transactions are charging  
11 fees that are not stated to be dependent on success,  
12 whereas others of them are only paid in effect expressly  
13 on the basis of success. Is that right?

14 So, for example, if I'm remembering correctly, it is  
15 a point that Lindisfarne emphasise in their written  
16 opening, they say that anything they earned was — for  
17 doing what they did was simply based on the transaction  
18 numbers, not tied to whether it successfully generated a  
19 refund.

20 It may be a separate question whether in practice  
21 they would ever have been paid had they not been  
22 successful because of course all the applications I'm  
23 going to be looking at are applications that were  
24 successful.

25 I think it is also said by Messrs Oakley and

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1 Mitchell that anything they agreed to be paid was on the  
2 face of it not dependent on the success of the  
3 transactions. When I say success, I mean success in  
4 terms of ultimately generating a successful tax reclaim.  
5 I don't know whether that is agreed or whether SKAT will  
6 be saying that everybody involved was involved on the  
7 basis that they only got paid anything ever, if and to  
8 the extent that applications successfully generated tax  
9 reclaims.  
10 MR RABINOWITZ: My Lord, Lindisfarne may be a separate case,  
11 but if you put aside Lindisfarne, our case is that  
12 actually what was happening here is that all  
13 participants in the trading scheme got paid out of SKAT  
14 refunds. That is clear from the timing of the payments  
15 and the amount of the payments and the basis of the  
16 payments, which we will come to.  
17 They tended to be worked out on the basis of  
18 a percentage of the gross dividend that was paid and  
19 that is inconsistent with there being a payment  
20 regardless of success.  
21 Now, Lindisfarne may be a special case. I don't off  
22 the top of my head know the detail for that. But one of  
23 the points we make is that —  
24 MR JUSTICE ANDREW BAKER: Well, let's not get into the  
25 detail. I will simply observe that it does not

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1 immediately strike me as necessarily consistent only  
 2 with a fee payable contingent upon success that the fee  
 3 is calculated by reference to the amount that will be  
 4 paid if the application is successful. Nor is it  
 5 necessarily, it seems to me, inconsistent with an  
 6 unconditional entitlement to some species of brokerage  
 7 or other fee that in fact because all the applications  
 8 were successful, they actually got paid traceably from  
 9 those proceeds. Because there may, at least with some  
 10 of the actors involved, be a prior question of whether  
 11 they entered into agreements to take a certain role or  
 12 play a certain part on a simple unconditional basis of  
 13 so many basis points per transaction, or the like. But  
 14 we may need to look at that at some point.  
 15 MR RABINOWITZ: We will come to that. But in a way,  
 16 my Lord, your Lordship may be right, it is not  
 17 necessarily inconsistent with what I have suggested is  
 18 the position. But if you have a scheme where the  
 19 trading counterparties are being paid not by reference  
 20 to how they do or don't do in their trades, which are  
 21 all in any event choreographed or orchestrated, but by  
 22 reference to a completely extraneous event which is  
 23 payment of a dividend by SKAT, or repayment of  
 24 a dividend by SKAT and a percentage out of that. That  
 25 is the first point.

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1 Leave aside whether they say we get paid in any  
 2 event, in circumstances where the scheme works, there  
 3 are no examples of it not working, with respect, that  
 4 may be a distinction without a difference.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: But we will come to that in due course.  
 7 Certainly what does look odd, and I'm being as neutral  
 8 about this as possible, is that you have trading  
 9 companies where the set-up is the basis of the payment  
 10 is not how they do the trading, but it is based upon  
 11 a fixed percentage of something completely extraneous to  
 12 what they are doing, which is an application made for  
 13 a tax refund.  
 14 MR JUSTICE ANDREW BAKER: It may be that there is a capacity  
 15 for that to be part of a submission, if you require it,  
 16 depending on what any individual defendant is saying as  
 17 to their state of knowledge, a submission to the effect  
 18 that they must have appreciated ———  
 19 MR RABINOWITZ: Exactly.  
 20 MR JUSTICE ANDREW BAKER: — that the sole purpose of their  
 21 involvement together with anybody else's involvement was  
 22 the generation of a tax reclaim from SKAT.  
 23 MR RABINOWITZ: Your Lordship is right. I'm only raising  
 24 that in the context of your Lordship putting to me,  
 25 perfectly fairly, because that is what they say, some

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1 people say you should assume some innocence because they  
 2 only ever got paid if it worked for what they did —  
 3 sorry, they got paid regardless of whether it worked or  
 4 not. In the scheme of things with respect that doesn't  
 5 take them very far, is my submission.  
 6 MR JUSTICE ANDREW BAKER: I understand how that argument  
 7 will potentially play out. All right, thank you.  
 8 MR RABINOWITZ: So we have done the Ganymede. I have made  
 9 the point that they then (inaudible) the trading  
 10 counterparties and the introducers and we will see that  
 11 in due course.  
 12 Just moving on to the conduits: Fire, ACAI, Parla  
 13 and Philo, it is common ground that these are BVI  
 14 companies, all incorporated within a window of about  
 15 six weeks between 29 May 2015 and 8 July 2015, all  
 16 initially owned and controlled by Usha Shah, and then  
 17 later owned and controlled by Elysium Global or  
 18 Sanjay Shah. That is paragraphs 28, 30, 31 and 32 in  
 19 the list of common ground issues.  
 20 Just to remind your Lordship, the conduit companies  
 21 are relevant and important because after July 2015 they  
 22 took over Ganymede's role in distributing the proceeds  
 23 of the Solo applications, and we will obviously come  
 24 back and look at that later.  
 25 MR JUSTICE ANDREW BAKER: But the timing of their

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1 involvement means that, for example, the DWF defendants,  
 2 or rather the claims against the DWF defendants don't  
 3 end up involving those conduit companies at all, because  
 4 they only come in at the later stages of the  
 5 Solo Scheme, for example.  
 6 MR RABINOWITZ: Indeed.  
 7 MR JUSTICE ANDREW BAKER: Yes.  
 8 MR RABINOWITZ: Just going back to a point your Lordship  
 9 raised earlier, Mr Goldsmith tells me that the SCP CANs  
 10 from March 2014 onwards do have the 10 —  
 11 MR JUSTICE ANDREW BAKER: Ah, right, just the change of  
 12 address point.  
 13 MR RABINOWITZ: The address 10 Exchange Square. That is  
 14 from March 2014.  
 15 MR JUSTICE ANDREW BAKER: Yes.  
 16 MR RABINOWITZ: If we can then just go back to the schematic  
 17 and go to the third page of that {F/391/3}, this has  
 18 a fair amount more detail on it. As your Lordship can  
 19 see from the heading, this seeks to identify for your  
 20 Lordship the Solo applicants and to show below the Solo  
 21 custodians — show them below the Solo custodians of  
 22 which they are the clients.  
 23 We have sought to identify for your Lordship on this  
 24 slide the different groups that emerge, they are shown  
 25 in purple boxes. They are, as your Lordship sees, US

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1 Solo applicants, and I think there are nine different  
 2 groups of those. I will say something about them in due  
 3 course. Your Lordship sees the Malaysian Solo  
 4 applicants, there were two main groups of those which  
 5 I will again address.  
 6 Your Lordship also sees to the right—hand side of  
 7 this slide, yellow boxes, all of which have red rings  
 8 around them. So your Lordship sees Mr Mike Murphy,  
 9 Daniel Fletcher, John Devonshire, Mr Tucci, Mr Bradley,  
 10 Mr Godson, Mr Crescenzo, Mr Lehman. Not one of the  
 11 Lehman Brothers.  
 12 I should just explain the red outline around that.  
 13 These are introducers in the yellow boxes, the people  
 14 who introduced the US Solo applicants or the Malaysian  
 15 applicants, and the red outline is intended to signify  
 16 they are persons who received payments from Ganymede or  
 17 the conduit companies in respect of the introductions.  
 18 MR JUSTICE ANDREW BAKER: Yes.  
 19 MR RABINOWITZ: I'm not going to take up more time on  
 20 getting into the detail of that at the moment, my Lord.  
 21 Can I then invite your Lordship to go on to slide 4.  
 22 Thank you very much. Now we have the — just looking at  
 23 the slide, the whole of the bottom of the schematic has  
 24 all the players that your Lordship has already seen.  
 25 MR JUSTICE ANDREW BAKER: Yes.

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1 MR RABINOWITZ: As well as on the right—hand side grey  
 2 boxes, and in those grey boxes your Lordship will see  
 3 the trading counterparties involved in the Solo model  
 4 trading and associate defendants. So short sellers and  
 5 stock lenders, then forward counterparties and then the  
 6 brokers.  
 7 MR JUSTICE ANDREW BAKER: Yes.  
 8 MR RABINOWITZ: And again the red framing is intended to  
 9 identify persons who again received payment from  
 10 Ganymede or the conduit companies for what they were  
 11 doing. That applies, as your Lordship sees, to everyone  
 12 other than the brokers in the last box. I should say in  
 13 relation to the brokers in the last box that some of  
 14 them, like Novus, did receive payments for what they  
 15 were doing, but we have left out the red outline,  
 16 because not all of them received payments, so we were  
 17 trying to be very fair.  
 18 MR JUSTICE ANDREW BAKER: Yes.  
 19 MR RABINOWITZ: If I can just say something first about the  
 20 short sellers in the grey box and then I will say  
 21 something about the stock lenders or forward or future  
 22 counterparties, again keeping it at a high level and  
 23 I will come back to say a little bit more of the detail  
 24 in due course.  
 25 If we can just for this purpose go to the schedule

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1 of trading counterparties which we had at {B/110.1/1}.  
 2 This was attached to SKAT's pleading. Thank you very  
 3 much.  
 4 MR JUSTICE ANDREW BAKER: Yes.  
 5 MR RABINOWITZ: Now, as my Lord sees from the side heading  
 6 on the top left, it refers to the Solo WHT scheme  
 7 starting at page 1. Table 1 identifies the short  
 8 sellers, and again your Lordship sees we set out here in  
 9 each case the ultimate beneficial owner. That is UBO.  
 10 MR JUSTICE ANDREW BAKER: Yes.  
 11 MR RABINOWITZ: The domicile, the date of incorporation and  
 12 the issued share capital, which if your Lordship glances  
 13 at the last box your Lordship will see was almost always  
 14 very small or relatively small, if it existed at all.  
 15 The schedule also sets out the date of the striking  
 16 off, where relevant, of the relevant entity, because as  
 17 my Lord will note most of the trading parties in the  
 18 Solo Scheme, albeit not all, were struck off after the  
 19 trading ceased. And by "after the trading ceased",  
 20 I mean after the Solo trading ceased. So for the most  
 21 part — they were not all set up just in time to do the  
 22 trading but many of them were and then they were struck  
 23 off shortly after the trading ceased.  
 24 If your Lordship then goes over to page {B/110.1/3},  
 25 where table 2 starts. Thank you. Your Lordship sees

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1 that we do the same for the stock lenders involved in  
 2 the Solo Scheme. Again, ultimate beneficial owner,  
 3 domicile, date of incorporation, date of striking off,  
 4 share capital. And your Lordship will note these were  
 5 companies that were involved in many hundred million  
 6 dollars' worth of deals, put it that way, in the trading  
 7 that we looked at. The share transactions were worth  
 8 many hundreds of millions of dollars of krone, pounds,  
 9 dollars, however one wants to look at.  
 10 If your Lordship looks at the share capital  
 11 involved, that again gives your Lordship some indication  
 12 of whether those trading with these companies really  
 13 understood there to be any genuine trade at which  
 14 parties were put at risk.  
 15 If we then go over to page {B/110.1/5}, just to look  
 16 at table 3, which starts at page 5, your Lordship will  
 17 see that we do the same for forward counterparties,  
 18 forward/future counterparties. I ought just to say  
 19 this: this schedule as amended, we think it is correct,  
 20 but it is subject to one small correction. That relates  
 21 to something relevant to the Maple Point Scheme, and  
 22 since we have the document open now perhaps I can just  
 23 identify what it is.  
 24 If we go to page {B/110.1/7}, entry 103 refers to an  
 25 entity called Evimer FZC. That was a forward

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1 counterparty in the Maple Scheme. It wasn't a short  
 2 seller and therefore it shouldn't appear at number 103.  
 3 So if my Lord will just bear in mind that that is an  
 4 error. It is where it should be at entry 108 over the  
 5 page, but it shouldn't be there as well.  
 6 Just going back to the Solo Scheme, I ought —  
 7 MR JUSTICE ANDREW BAKER: 109, in fact, over the page, yes  
 8 {B/110.1/8}. And on that very point, that correction  
 9 having been made, is it the position that as regards at  
 10 least the corporate entities involved as any species of  
 11 trading counterparty, any given counterparty is only  
 12 ever either a short seller or a stock lending company or  
 13 a future or forward counterparty, or are there any  
 14 individual entities that do, maybe not in the same  
 15 transaction, but across the whole piece, sometimes do  
 16 one thing and sometimes do one of the other things?  
 17 MR RABINOWITZ: I will be corrected if I am wrong, but there  
 18 are entities which do more than one function and indeed  
 19 do more than one function sometimes in the same  
 20 transaction.  
 21 MR JUSTICE ANDREW BAKER: Right. I had certainly understood  
 22 that when one comes on to the Klar Scheme, one of the  
 23 simplifications was that type of simplification, namely  
 24 that it may be Salgado was being used but an entity was  
 25 being used to fulfil multiple different roles in the

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1 trading structure. But you are saying you think there  
 2 were instances of that in the other schemes as well?  
 3 MR RABINOWITZ: Yes, I think there are some examples and  
 4 I think we will see them when we go through some of the  
 5 trading later on.  
 6 So just in the context — just to identify two other  
 7 in a sense in doubt entries here, the SS defendants have  
 8 also queried the inclusion of two entities called Leda  
 9 and Metis. They both appear on page 3. And I think  
 10 they say they shouldn't be there. I will come back to  
 11 that in due course if I may, but subject to those three,  
 12 Evimer, where we accept that it was wrong, and Leda and  
 13 Metis —  
 14 MR JUSTICE ANDREW BAKER: That is in — those entries, rows  
 15 30 and 31, are therefore still in the short seller  
 16 section; is that right?  
 17 MR RABINOWITZ: Correct.  
 18 MR JUSTICE ANDREW BAKER: Thank you.  
 19 MR RABINOWITZ: Subject to that, we don't understand anyone  
 20 to suggest that there are any inaccuracies in this  
 21 document.  
 22 MR JUSTICE ANDREW BAKER: Thank you.  
 23 MR RABINOWITZ: Now, I'm going to be referring to the  
 24 schedule as we go along, so can we try and keep this on  
 25 the screen on the left — hand side, if we may.

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1 Can we on the right — hand side of the screen, please,  
 2 get up the main skeleton, our main skeleton {F/361/36},  
 3 paragraph 78. I just want to say something about the  
 4 principles behind the short sellers. Thank you.  
 5 So, my Lord, as we say, or as we explain or as we  
 6 suggest at paragraph 78, Mr Sanjay Shah admits that he  
 7 introduced most of the individuals behind the short  
 8 sellers to GSS. Given the reference to Mr Shah's  
 9 evidence about this in footnote 132 — I wasn't  
 10 proposing to turn it up — we also identify in that  
 11 footnote the handful of short sellers who exceptionally  
 12 Sanjay Shah says that he didn't introduce to the  
 13 Solo Scheme, as your Lordship sees from that.  
 14 MR JUSTICE ANDREW BAKER: Yes.  
 15 MR RABINOWITZ: We also explain at paragraph 78 that you can  
 16 divide the individuals who Mr Shah accepts he introduced  
 17 to GSS into three categories, namely first the former  
 18 employees of Solo, secondly friends of Sanjay Shah, and  
 19 third, long — standing business contacts of Mr Shah. And  
 20 as we go through the schedule of trading companies,  
 21 counterparties, I will briefly mention to your Lordship  
 22 which category that party falls into.  
 23 So if we go back, then, to the schedule of trading  
 24 parties, left — hand side of the screen, and we go back to  
 25 {B/110.1/1} where we have the short sellers. We start

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1 with the short sellers owned by the defendants Oakley  
 2 and Mitchell, and your Lordship sees — I think there  
 3 are five of them, it is not in dispute that  
 4 Messrs Oakley and Mitchell were long — standing business  
 5 contacts of Mr Shah and your Lordship sees from what we  
 6 say there they were behind — Oakley and Mitchell were  
 7 together behind the different shares, those short  
 8 sellers.  
 9 If your Lordship looks across, you will see that  
 10 four of them were Cayman companies, one of them was an  
 11 English company. DDC, Procap, GrayTek, Opal, all  
 12 incorporated in 2014, were the Cayman ones. The English  
 13 company is called Orca. DDC incorporated earlier in  
 14 2012, your Lordship sees it has a share capital of \$200,  
 15 while Orca, the English company, was incorporated a few  
 16 years earlier with only £10 of share capital.  
 17 The other Cayman companies incorporated at various  
 18 dates in 2014 did have, as your Lordship sees, more  
 19 substantial share capital.  
 20 Now, Orca is a defendant in these proceedings along  
 21 with Messrs Oakley and Mitchell. The reason why the  
 22 other (inaudible) companies are not defendants, my Lord,  
 23 is because they have been struck off, as your Lordship  
 24 sees, from the schedule.  
 25 MR JUSTICE ANDREW BAKER: In relation to this categorisation

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1 of individuals, does SKAT have any position or evidence  
 2 in relation to Mr Celotto, who is cited as a co-owner of  
 3 Procap with Mr Oakley and Mr Mitchell and is not a name  
 4 I otherwise think I'm familiar with?  
 5 MR RABINOWITZ: He is mentioned in the Oakley and Mitchell  
 6 witness statements, but beyond that, my Lord —  
 7 MR JUSTICE ANDREW BAKER: So for what that is worth, SKAT  
 8 has no particular case on whether he, Mr Celotto,  
 9 independently of Messrs Oakley and Mitchell, had any  
 10 background of connection to Sanjay Shah. Thank you.  
 11 MR RABINOWITZ: Correct. Just staying with the schedule, if  
 12 your Lordship looks at the next four entries, numbers 6  
 13 to 9, they are all short sellers owned by  
 14 Mr Michael Murphy who is also a defendant in these  
 15 proceedings: Schmet, Sciron, Baja and Nisus, and your  
 16 Lordship sees that each of those was a BVI incorporated  
 17 in 2014 or 2015 with zero par value, that is to say zero  
 18 issued share capital.  
 19 The companies are not defendants in these  
 20 proceedings and as again, as your Lordship will have  
 21 picked up, that is because they have all been struck  
 22 off, and that is all having occurred within a year of  
 23 SKAT suspending withholding tax claims or reclaims,  
 24 which it did in August 2015.  
 25 Again, if we look, if we can, back at our main

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1 skeleton, paragraph 78 {F/361/36}, my Lord sees  
 2 a reference to say Sanjay Shah's evidence that Mr Murphy  
 3 was a friend of his, and again the reference is in the  
 4 footnote, my Lord {F/361/36}.  
 5 MR JUSTICE ANDREW BAKER: Yes.  
 6 MR RABINOWITZ: Again, back to the schedule, on the  
 7 left-hand side, if we then look at the next entry, which  
 8 is number 10, that is Rock Capital, a Gibraltar company  
 9 owned Mr Koerner, Alexander Koerner, established earlier  
 10 in 2011 with a share capital of £100 and we have already  
 11 seen my Lord that Rock Capital was the short seller in  
 12 the Solo 3 sample trade that we went through this  
 13 morning.  
 14 MR JUSTICE ANDREW BAKER: Yes.  
 15 MR RABINOWITZ: And whilst Mr Koerner is, as your Lordship  
 16 knows, a defendant in these proceedings, Rock Capital is  
 17 not because it was struck off in August 2016, as your  
 18 Lordship sees. Again, looking on the right-hand side of  
 19 the screen at our main skeleton, paragraph 78  
 20 {F/361/36}, we explain that Mr Sanjay Shah admits that  
 21 Mr Koerner was a business contact with whom he also  
 22 socialised.  
 23 Then just going — staying with the paragraph 78 for  
 24 the moment, your Lordship sees in paragraph 78  
 25 a reference to Rajeev Dave, who was a close friend of

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1 Sanjay Shah from their college days. He was also the  
 2 brother of Sanjeev Dave, who appears a little further  
 3 up, still in the same paragraph. He was Solo's finance  
 4 director in Dubai, at least at an early stage of the  
 5 relevant events, and I can tell your Lordship he was  
 6 also director of SCL from July 2013 to January 2014.  
 7 And that, for my Lord's note, is a reference that you  
 8 will find at {MTK/29/2}.  
 9 If we then go back to the left-hand side of the  
 10 screen, to the schedule {B/110.1/1}, just to look at the  
 11 Rajeev Dave short sellers, your Lordship sees them on  
 12 this page at 11 and 12 and over the page at row 13.  
 13 {B/110.1/2}. Thank you. A Squared Investments, a good  
 14 name, and if we go back to page {B/110.1/1} your  
 15 Lordship sees in relation to the first two of those,  
 16 that is to say Abra and SPK Cayman, they were  
 17 incorporated in 2012 and 2013 respectively, both in the  
 18 Cayman Islands and there is a note, as your Lordship  
 19 sees, that Sanjeev Dave was the owner of SPK Cayman  
 20 from March 2015 onwards.  
 21 Just staying with Rajeev Dave for the moment, his  
 22 third company, A Squared Investments on page  
 23 {B/110.1/2}, if we go back to that, your Lordship sees  
 24 that was a UAE company.  
 25 MR JUSTICE ANDREW BAKER: Yes.

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1 MR RABINOWITZ: And it did have — incorporated in 2013 and  
 2 it did have £100,000 of whatever the currency is share  
 3 capital — dirham. I'm not sure what that's actually  
 4 worth. £2,000, apparently.  
 5 If we then stay on {B/110.1/3}, just looking at the  
 6 other Sanjeev Dave companies — sorry, that is  
 7 Sanjeev Dave companies, numbers 30 to 32, top of the  
 8 page, starting with the one at the top, which is  
 9 SPK Consultants, a UAE company incorporated on  
 10 24 February 2015 with issued share capital of 10,000  
 11 dirham, that's about £2,000.  
 12 Then numbers 30 and 31, Leda and Metis, these are  
 13 the ones that the SSD defendants have queried. They  
 14 were Cayman companies incorporated in 2011 and as the  
 15 two footnotes there make clear, they were originally  
 16 owned by other persons also involved with Solo but were  
 17 later transferred to Sanjeev Dave, and just for  
 18 my Lord's note, Rajeev and Sanjeev Dave are both  
 19 defendants in SKAT's proceedings in Dubai, which is  
 20 where they are based.  
 21 Go back to page {B/110.1/2}, please. If your  
 22 Lordship looks at rows 14 to 17, your Lordship sees four  
 23 short sellers. That is Aronex, Miralty, Wicklow and  
 24 CFS. They are ones where Sanjay Shah says he does not  
 25 recognise their owners, although we would note, my Lord,

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1 that the trader for those entities, Mr Richard Mills,  
 2 was in fact a business contact of Mr Sanjay Shah's.  
 3 I don't propose to go to that now, but Mr Mills' role as  
 4 trader for these entities emerges clearly from certain  
 5 Skype messages we have, and I don't propose we go there,  
 6 {MTO/8}.  
 7 Mr Mills was also the owner of his own short seller  
 8 that we can find at page {B/110.1/3}, if your Lordship  
 9 goes on to page 3. Thank you, Gulf Management Group  
 10 number 36, your Lordship will see, owned by Mr Mills.  
 11 MR JUSTICE ANDREW BAKER: Yes.  
 12 MR RABINOWITZ: And Mr Mills, as we say in paragraph 78, was  
 13 a business contact of Mr Sanjay Shah.  
 14 Now if we go again back to the left—hand side of the  
 15 screen, back to page {B/110.1/2}, just looking at rows  
 16 18 to 21, your Lordship sees four Dilip Shah short  
 17 sellers: Black Square, DE Market View, Glendale and  
 18 RKDS. As your Lordship again sees, they are all Cayman  
 19 companies set up in 2013 or 2014 with share capital of  
 20 less than \$1,000.  
 21 According to Sanjay Shah's evidence, Dilip Shah was  
 22 formerly a broker at Solo and your Lordship can see  
 23 a reference for that at paragraph 78 on the right—hand  
 24 side.  
 25 MR JUSTICE ANDREW BAKER: Thank you.

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1 MR RABINOWITZ: There is a reference also to another former  
 2 Solo employee, Jason Browne. Mr Browne, I think I have  
 3 already mentioned, worked at the GSS department at Solo.  
 4 He was in fact a long—standing employee of the  
 5 Solo Group. Can we in relation to Mr Browne just go to  
 6 {MTK/90/1} on the left—hand side, please. Thank you.  
 7 This is Mr Browne's FCA registration.  
 8 MR JUSTICE ANDREW BAKER: Yes.  
 9 MR RABINOWITZ: You can see beginning, looking at page 1,  
 10 that he began at SCL in January 2011 and if your  
 11 Lordship looks at the bottom of page 1 and to the top of  
 12 page {MTK/90/2}, he was at SCP in 2012 and 2013 and he  
 13 then moved to WPD until mid—September 2014.  
 14 MR JUSTICE ANDREW BAKER: Yes, thank you.  
 15 MR RABINOWITZ: If we can then go back to the schedule, I'm  
 16 sorry, {B/110.1/2}. Thank you very much. Just looking  
 17 down the UBO column to numbers 22 through to 25, your  
 18 Lordship sees that Mr Browne was behind four of the  
 19 short sellers and as your Lordship sees, looking at the  
 20 dates of incorporation, fourth one along, each of those  
 21 companies was established in the BVI on 5 December 2014,  
 22 which is around three months after Mr Browne left WPD,  
 23 so he leaves WPD and he sets up these short sellers.  
 24 To finish off Mr Browne's story, although not  
 25 a defendant in these proceedings, he is a defendant in

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1 the Dubai proceedings.  
 2 My Lord, I don't know what time you want to carry  
 3 on. This is taking, I know —  
 4 MR JUSTICE ANDREW BAKER: Why don't we see if we can  
 5 complete this section of this, that is to say the short  
 6 sellers that we are nearly got to the end of, then we  
 7 need to stop.  
 8 MR RABINOWITZ: I'm grateful, my Lord.  
 9 MR JUSTICE ANDREW BAKER: Just in relation to Mr Browne's  
 10 companies there, they all appear to be given two  
 11 different names; is that because they were incorporated  
 12 under one set of names and at some point there was  
 13 a change of names?  
 14 MR RABINOWITZ: They changed their names, my Lord. After  
 15 trading finished.  
 16 MR JUSTICE ANDREW BAKER: Okay, thank you. Yes, thank you.  
 17 MR RABINOWITZ: So staying with the short sellers your  
 18 Lordship then looks, still on page {B/110.1/2}, your  
 19 Lordship sees references to Mr Paul Warner, to four  
 20 companies.  
 21 MR JUSTICE ANDREW BAKER: Yes.  
 22 MR RABINOWITZ: Again, your Lordship sees they are all  
 23 companies set up in the BVI in December 2014, zero par  
 24 value. Sanjay Shah's evidence is he didn't know  
 25 Mr Warner. We give the reference for that in our main

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1 skeleton at footnote 132, and just while we are looking  
 2 at paragraph 78 {F/361/36}, can I just identify for  
 3 my Lord the last two groups of short sellers, whose  
 4 owners were known to Sanjay Shah, as he acknowledges.  
 5 The first is Dai Griffiths. We say that he was a friend  
 6 of Sanjay Shah and Mr Shah says the same thing. The  
 7 second is Mr Stuart Wilson, who was a business contact  
 8 of Mr Shah's.  
 9 Then going back to the schedule of trading  
 10 counterparties, if we go to page {B/110.1/3}, just to  
 11 find their companies, starting with Mr Griffiths, number  
 12 33, your Lordship sees LDW, a reference to among others  
 13 Mr Griffiths.  
 14 MR JUSTICE ANDREW BAKER: Yes.  
 15 MR RABINOWITZ: Mr Griffiths is not a defendant in these  
 16 proceedings but he is a defendant to SKAT's proceedings  
 17 in Dubai, where he is based.  
 18 And then Stuart Wilson, your Lordship sees numbers  
 19 34 and 35: Blumarble and Chem Capital.  
 20 MR JUSTICE ANDREW BAKER: Yes.  
 21 MR RABINOWITZ: They were incorporated in 2012 and 2013, and  
 22 that is the short sellers.  
 23 MR JUSTICE ANDREW BAKER: Thank you.  
 24 MR RABINOWITZ: And probably, subject to your Lordship —  
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April 15, 2024

Skatteforvaltningen v Solo Capital Partners LLP &amp; Others

Day 1MT

1 Housekeeping

2 MR JUSTICE ANDREW BAKER: Yes, one point I did want to

3 mention just before we broke, is this, and it concerns

4 our agenda for Friday, and I hope in particular Mr. Choo

5 is listening .

6 Is there any positive opposition to the application

7 made on behalf of Mr Bains for Mr. Choo to be allowed to

8 conduct advocacy at trial?

9 MR RABINOWITZ: No, not from us.

10 MR JUSTICE ANDREW BAKER: Would there be any objection to my

11 considering that application simply on the papers and

12 not taking up time with it on Friday?

13 MR RABINOWITZ: Certainly no objection from us, my Lord.

14 MR JUSTICE ANDREW BAKER: In relation to both aspects,

15 before you all say that's your final position, I feel in

16 the circumstances I probably should make clear that at

17 least if my memory has not failed me I do think Mr. Choo

18 instructed me at the Bar. Now, that is now long enough

19 ago that I'm doubting my own memory, but I believe in

20 his time at DLA he was my instructing solicitor at least

21 on one arbitration matter that did go to a hearing. He

22 will forgive me if I say I would have to consult my own

23 past records from practice as to whether prior to or

24 after that one reasonably significant case that I have

25 some memory of, whether I also worked for him on

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1 paperwork and advice on other matters, but it is the

2 fact that I know we conducted an arbitration together

3 where he was my instructing solicitor, I was counsel,

4 that I have in mind.

5 If anybody had a thought that that should affect my

6 attitude towards the application that he conduct

7 advocacy before me, say so now or otherwise I will treat

8 it as a neutral factor and I will consider that

9 application on the papers.

10 Very good. And then it may be that that means that

11 if he and Mr Bains are happy to just follow what happens

12 after the fact that that saves them the need to attend

13 on Friday. But that is a matter for them, as to whether

14 they were going to make submissions on any other

15 aspects.

16 All right, very good. All right, 10 o'clock

17 tomorrow, please. Thank you very much.

18 (4.02 pm)

19 (The hearing adjourned until 10 o'clock on Tuesday,

20 16 April 2024)

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